

FOTW Merchandise Co.

STANDARD CONDITIONS OF CONTRACT

INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

"Buyer" means the person(s), firm or company who purchases the Products and Services from the Seller

"Buyer's Material" means the information and materials to be provided by the Buyer to the Seller to enable the Seller to provide the Products and/or perform the Services.

"Conditions" means the terms and conditions herein

"Contract" means any contract between the Seller and the Buyer for the sale and purchase of the Products and/or Services

"Delivery Point" means the place where delivery of the Products and/or Services is to take place under Condition 4

"Order" means the purchase order placed by the Buyer with the Seller

"Order Confirmation" means Seller's written acceptance of the Order

"Products" means goods to be supplied to the Buyer by the Seller as set out in the Order Confirmation

"Seller" means FOTW Merchandise Co.

"Services" means the services to be provided by the Seller as set out in the Order Confirmation

"Storage Instructions" means the storage instructions as made known to the Buyer from time to time.

1.2 In these Conditions:

1.2.1 references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;

1.2.2 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; and

1.2.3 headings will not affect the construction of these Conditions.

2 APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3, 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).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract. The parties acknowledge to each other that they have not relied upon any statement or representation by the other when entering into the Contract unless expressly set out in these Conditions or incorporated pursuant to Condition 2.3.
- 2.3 Any variation to these Conditions and any representations about the Products and Services shall have no effect unless expressly agreed in writing and signed by a Director [or authorised representative] of the Seller.
- 2.4 Each order for Products and/or Services by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase Products or Services (as the case may be) subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until an Order Confirmation is issued by the Seller and the Seller confirms to the Buyer the date of delivery of the Products and/or Services to the Buyer or (if earlier) the Seller delivers the Products and/or Services to the Buyer.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Seller despatches an Order Confirmation to the Buyer. Any quotation is valid for a period of 28 days only from its date, provided that the Seller has not previously withdrawn it. All quotations are based on the current cost of production and are subject to amendment by the Seller.
- 2.8 Each Order issued by the Buyer to the Seller for Products and/or Services and accepted by the Seller shall constitute a separate contract.
- 2.9 The price, quantity and any specification for the Products and/or Services is as set out in the Order Confirmation.
- 2.10 Proofs of all work may be submitted for the Buyer's approval. The Seller shall accept no responsibility for any errors in proofs passed by the Buyer.

3 **DESCRIPTION**

- 3.1 The description of the Products and/or Services shall be as set out in the Order Confirmation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained on the Seller's website or in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products and/or Services described in them. They will not form part of this Contract.

4 **DELIVERY**

- 4.1 Unless otherwise agreed in writing by the Seller, delivery of the Products shall take place at the Seller's place of business.
- 4.2 The Buyer shall not refuse to take delivery of the Products and will take delivery of the Products within [7] days of the Seller giving it notice that the Products are ready for delivery.
- 4.3 If for any reason the Buyer will not accept delivery of any of the Products, or the Seller is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 4.3.1 risk in the Products will pass to the Buyer (including for loss or damage caused by the Seller's negligence);
- 4.3.2 the Products will be deemed to have been delivered; and
- 4.3.3 the Seller may store the Products until collected by the Buyer and the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.4 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Products.
- 4.5 The Buyer shall inspect the Products on delivery and shall within [5] days of delivery notify the Seller of any alleged defect, shortage in quality, damage or failure to comply with descriptions or sample. The Buyer shall afford the Seller an opportunity to inspect the Products within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Products shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage which would be apparent on a reasonable examination of the Products and the Buyer shall be deemed to have accepted the Products.

NON-DELIVERY OR LATE DELIVERY

- 5.1 Time of delivery or performance of the Services shall not be of the essence and any delivery date is an estimate only. The Seller acknowledges that time of delivery may be important to the Buyer, and shall use all reasonable endeavours to avoid late deliveries. The Buyer shall have the right to cancel any Order without liability to the Seller if delivery is more than 90 days late.
This Condition 5.1 sets out the Buyer's only remedy for such delay.
- 5.2 The quantity of any consignment of Products as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.3 If the Seller delivers to the Buyer a quantity of the Products of up to 10% more or less than the quantity accepted by the Seller, the Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for the Products at the pro-rata Contract rate.
- 5.4 The Seller shall not be liable for any non-delivery of Products (even if caused by the Seller's negligence) unless written notice is given to the Seller within 2 days of the date when the Products would in the ordinary course of events have been received.
- 5.5 Any liability of the Seller for non-delivery of the Products or failure to provide the Services shall be limited to, at its discretion, replacing the Products or re-performing the Services within a reasonable time, issuing a credit note at the pro rata Contract rate against any invoice raised for such Products or Services or a refund of the purchase price paid.

6 RISK AND TITLE

- 6.1 The Products are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Products shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Products; and
- 6.2.2 all other sums which are or which become due to the Seller from the Buyer on any account.
- 6.3 Until ownership of the Products has passed to the Buyer, the Buyer must:
- 6.3.1 hold the Products on a fiduciary basis as the Seller's bailee;
- 6.3.2 store the Products (at no cost to the Seller) separately from all other products of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

- .3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
- 6.3.4 maintain the Products in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
- 6.3.5 hold the proceeds of the insurance referred to in Condition 6.3.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Products before ownership has passed to it solely on the following Conditions:
 - 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 6.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Products and Services shall terminate immediately if:
 - 6.5.1 the Buyer (being an individual) 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 (whether formal or informal), or enters into liquidation (whether 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 of 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 in any jurisdiction; or
 - 6.5.2 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 Seller 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; or
 - 6.5.3 the Buyer encumbers or in any way charges any of the Products; or
 - 6.5.4 anything analogous to the foregoing occurs in any other jurisdiction.
- 6.6 The Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Seller.
- 6.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7 BUYER'S MATERIAL

- 7.1 The Buyer's Material supplied to the Seller by or on behalf of the Buyer shall, while it is in possession of the Seller or in transit to or from the Seller, be deemed to be at the Buyer's risk and the Seller shall not be liable for any loss or damage to the same.
- 7.2 The Seller shall be entitled to destroy the Buyer's Material supplied to the Seller by or on behalf of the Buyer upon the earlier of 1 year after they come into the Seller's possession or the expiry of 1 month's notice to the Buyer given at any time.
- 7.3 The Seller may reject the Buyer's Materials including without limitation any paper, films, discs, flat artwork, plate, or other materials supplied or specified by the Buyer which appear at the sole discretion of the Seller to be unsuitable. The Buyer shall be liable for all costs associated with the replacement of unsuitable materials.
- 7.4 If the Buyer supplies or specifies materials:
- 7.4.1 the Seller will endeavour to produce the best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified: and
- 7.4.2 the quantities of materials shall be adequate to cover normal spoilage.
- 7.4.3 the Seller shall be entitled to refuse to produce any Products that in the Seller sole discretion may be of an illegal or libellous nature.
- 7.4.4 the Buyer will indemnify the Seller and keep the Seller indemnified and hold the Seller harmless against any and all damages, losses and costs and expenses that may be incurred by the Seller in respect of any allegation, claim, action or proceedings that the Buyer's Material is of an illegal or libellous nature.

8 PRICE

- 8.1 Subject to Condition 7.3 and 8.2 the price for the Products and/or Services shall be the price set out in the Order Confirmation.
- 8.2 The Buyer shall be liable for all costs associated with:
- 8.2.1 preliminary work undertaken by the Seller at the Buyer's request.
- 8.2.2 the Buyer's corrections on and after first proof, including alterations in style.
- 8.2.3 the return of the Products as identified in Conditions 12 and 13.
- 8.2.4 all necessary origination, re-sizing, adjustments, touch-ups, screen and set-up time.

- 8.3 All costs stated in Condition 8.2 shall be charged at the rate published by the Seller from time to time.
- 8.4 The price for the Products and/or Services 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 Products and/or Services.

9 PAYMENT

- 9.1 The Buyer shall pay for the Products and/or Services no later than the last working day of the month following the month in which the Seller's invoice was raised.
- 9.2 Time for payment shall be of the essence.
- 9.3 All payments will be in pounds sterling unless the Seller states otherwise.
- 9.4 No payment shall be deemed to have been received until the Seller has received cleared funds.
- 9.5 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 Seller to the Buyer.
- 9.6 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:
- 9.6.1 to cancel the contract or suspend any further deliveries to the Buyer;
- 9.6.2 to appropriate any payment made by the Buyer to such of the Products (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);
- 9.6.3 to a general lien on all Products of the Buyer in the Seller's possession (including Products of the Buyer which have been paid for) for the unpaid price of all Products sold to the Buyer by the Seller under this or any other contract.
- 9.6.4 to charge interest to the Buyer on such sum from the due date for payment in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.

10 **WARRANTY**

- 10.1 The Seller shall pass on the benefit of all warranties and guarantees provided to the Seller by the all third parties that manufacture and print the Products.
- 10.2 The Buyer warrants that he shall store the Products in accordance with the Storage Instructions. The Seller shall not be liable for any defect in a Product that has not been stored in accordance with the Storage Instructions.
- 10.3 The Seller agrees that the Services will be performed with reasonable skill and expertise.

11 **INTELLECTUAL PROPERTY**

- 11.1 The Buyer grants the Seller a non-exclusive, non-transferable, royalty-free licence to use the Buyer's Material for the purposes of providing the Products and Services.
- 11.2 All Intellectual Property Rights and title in and to the Buyer's Material shall remain vested in the Buyer. The Buyer warrants that he has the authority and power to grant the licence referred to in Condition 11.1.
- 11.3 Unless agreed otherwise all Intellectual Property Rights and title in and to the Products and/or Services (other than the Buyer's Material) will remain vested in the Seller and/or the Seller's licensors and no interest or ownership in the same is conveyed to the Buyer other than as set out in these Conditions.
- 11.4 Subject to the Buyer paying the Seller all sums due in accordance with Condition 8, the Seller licenses the intellectual property rights in the Products and/or Services to the Buyer on a non-exclusive, worldwide basis to such extent as is necessary to enable the Buyer and the Buyer's employees to make reasonable use of the Products and/or Services.
- 11.5 The Buyer will indemnify the Seller and keep the Seller indemnified and hold the Seller harmless against any and all damages, losses and costs and expenses that may be incurred by the Seller in respect of any allegation, claim, action or proceedings that our use, possession or modification of the Buyer's Material infringes the Intellectual Property Rights of any third party.

12 **RETURN OF REJECTED PRODUCTS**

- 12.1 If the Buyer rejects any of the Products and/or Services which are not in accordance with the Contract the Buyer shall nonetheless pay the full price for such Products and/or Services unless the Buyer gives no later than [5] days notice from the date of delivery. The Buyer shall be liable for all costs associated with the return of rejected Products.

13 RETURN OF PRODUCTS

- 13.1 All Products delivered to the Buyer shall not be accepted for return without the prior written approval of the Seller on terms to be determined at the absolute discretion of the Seller.
- 13.2 If the Seller agrees to accept any Products returned in accordance with Condition 13.1, the Buyer shall be liable to pay a handling charge of 10% of the price stated in the Order Confirmation. Such Products must be returned by the Buyer carriage-paid to the Seller in their original shipping carton.
- 13.3 Products returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

14 LIMITATION OF LIABILITY

- 14.1 Subject to the provisions of these Conditions, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 14.2 any breach of these Conditions; and
- 14.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 14.4 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 (as amended)) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.5 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.
- 14.6 Subject to Condition 14.5, the Seller shall not be liable to the Buyer for:
- 14.6.1 any indirect or consequential, special or punitive loss, damage, costs or expenses;
- 14.6.2 loss of profit;
- 14.6.3 loss of business;
- 14.6.4 loss of revenue; or
- 14.6.5 depletion of goodwill.

- 14.7 Subject to Condition 14.5, the Seller's total liability to the Buyer under or connected with these Conditions for:
- 14.7.1 injury to third parties or damage to the Buyer's tangible property resulting directly from the Seller's negligence or that of its employees shall not exceed £2,000,000 for any one event or series of connected events;
- 14.7.2 injury to third parties or damage to third party property arising directly out of the Products shall not exceed £100,000 for any one event or series of connected events;
- 14.7.3 any other direct loss not covered by Conditions 14.7.1 or 14.7.2 shall not exceed 125% of the price payable for the Products and Services.

15 **SUB-CONTRACTORS**

- 15.1 The Seller may sub-contract the manufacture or production of the Products and/or Services. The Seller agrees that it shall be responsible for the actions or omissions of any sub-contractor used by it in connection with any of the Products and/or Services or with satisfying any of the Seller's responsibilities under the Contract.

16 **ASSIGNMENT**

- 16.1 The Buyer shall not be entitled to assign, transfer or dispose of any right, obligation or interest in or arising out of the Contract or any part of it without the prior written consent of the Seller.
- 16.2 The Seller may assign the Contract or any part of it to any other person, firm or organisation.

17 **FORCE MAJEURE**

- 17.1 A party shall not have any liability for any loss or damage if its performance of any obligations under the Contract (other than non-payment of amounts that are due and payable) is delayed, hindered or prevented by any cause beyond its reasonable control, including, without limitation, fire, storm, flood, earthquake, accident, adverse weather conditions, explosions, Acts of God, war, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment dispute, protests, traffic congestion, vandalism, interruptions in communications or power supply and mechanical breakdown, failure or malfunction of computer systems. In the event of such delay, hindrance or prevention, such party shall be entitled to postpone delivery or performance by the duration of interference plus a reasonable start-up time thereafter, or to cancel the Contract in its entirety or partially, insofar as it has not been performed without incurring any liability for non-performance.

18 **TERMINATION OF CONTRACT**

- 18.1 The Seller shall have the right to terminate the Contract at any time by giving at least seven (7) days' notice to the Buyer (or immediately as provided in Condition 18.1.2) in any of the following events, which termination shall be effective upon expiry of such notice (or immediately as provided in Condition 18.1.2):
- 18.1.1 if the Buyer commits a material breach of any of the terms of the Contract and fails to remedy the same within thirty (30) days of being notified of the breach;
- 18.1.2 immediately upon the occurrence of the events in Condition 6.5, or if any material or significant part of the Buyer's undertaking, property, or assets shall be intervened in, expropriated, or confiscated by action of any government.
- 18.2 The Seller may terminate any Contract or suspend further deliveries (without prejudice to the foregoing right of termination) if the Buyer fails to pay any sum as it falls due, unless subject to a bona fide dispute and provided the undisputed amount has been paid.

19 **CONSEQUENCES OF TERMINATION**

- 19.1 On the termination of the Contract for any reason:
- 19.1.1 the Seller shall not be obliged to supply any Products and/or Services ordered by the Buyer unless already paid for; and
- 19.1.2 all payments payable to the Seller under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 19.2 The termination of this Contract shall not affect the respective rights and liabilities of each of the parties thereto which accrued prior to such termination nor any provisions which either expressly or impliedly are to remain in operation after termination.

20 **GENERAL**

- 20.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 20.2 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.
- 20.3 Failure or delay by the Seller 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.

- 20.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 20.5 The parties to this Contract do not intend that any term of this Contract will be enforce-able by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 20.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

21 **COMMUNICATIONS**

- 21.1 All communications between the parties about this Agreement must be in writing and delivered by hand or sent by pre-paid first class post or by facsimile transmission or by e-mail to its registered office or such changed address as shall be notified to the other party from time to time.
- 21.2 Communications shall be deemed to have been received:
- 21.2.1 if sent by pre-paid inland first class post, 4 days after posting (exclusive of the day of posting);
- 21.2.2 if delivered by hand, on the day of delivery;
- 21.2.3 if sent by facsimile transmission or e-mail on a working day (in England) prior to 4.00 p.m., at the time of transmission and otherwise on the next working day provided the sender can show satisfactory transmission.