

## 1.0 Definitions

Terms:	The terms & conditions referred to herein.
Vendor:	New Media Branding Ltd Registered in England & Wales No: 6025458 Registered Office: 7 Tollgate Buildings, Hadlow Road, Tonbridge, Kent, TN9 1NX
Customer:	You or your organisation
Goods:	Products sold by the <i>Vendor</i> to the <i>Customer</i> including packaging, instructions and other ancillary components.

## 2.0 Offer & Acceptance

- 2.1 All quotations are an invitation to the *Customer* to place an order with the *Vendor* and are valid for a period of seven (7) days from the date shown on the quotation unless it has previously been withdrawn by the *Vendor*. All quotations shall be e-mailed to the *Customer* and will outline the selected product(s) and corresponding price(s).
- 2.2. When the *Customer* places an order with the *Vendor* this is an offer to buy the *Goods* outlined in the quotation. Wherever it is not possible to accept your order to buy the *Goods* of the specification and description at the price quoted the *Vendor* will advise the *Customer* by e-mail and invite by another quotation to sell the *Goods* of the specification and description at the price stated in the new quotation.
- 2.3 All orders are subject to acceptance and the *Vendor* will accept all offers with an Order Confirmation that will be e-mailed to the *Customer*. The contract between the *Vendor* and *Customer* will only be formed when the *Customer* receives and Order Confirmation.
- 2.4 The Contract will relate only to *Goods* whose order the *Vendor* has confirmed in the Order Confirmation. The *Vendor* will not be obliged to supply any other *Goods* which may have been part of the *Customer's* order until the order of such *Goods* has been confirmed in a separate Order Confirmation.

## 3.0 Description

- 3.1 The quantity and description of the Products shall be as set out in our quotation or Order Confirmation. All samples, drawings, descriptions, specifications and advertising issued by the *Vendor* are issued or published for the sole purpose of giving an approximate idea of the *Goods* described in them.

## **4.0 Delivery**

- 4.1 Any delivery dates specified by the *Vendor* of the *Goods* are intended to be an estimate and time for delivery shall not be of the essence of the contract and the *Vendor* shall not be liable for any costs, damages or expenses caused directly or indirectly by any delay in the delivery of the goods. If no dates are so specified, delivery shall be within a reasonable time.
- 4.2 The costs of carriage and any insurance which you direct us to incur shall be reimbursed by you and shall be due on the date for payment of the price. The *Goods* shall be delivered by the *Vendor* to the *Customer's* address and the risk in the goods shall pass to the *Customer* upon such delivery taking place
- 4.3 If the *Vendor* delivers to the *Customer* a quantity of *Goods* of up to 5% more or less than the quantity ordered, the *Customer* shall not be entitled to object to or reject the *Goods* or any of them by reason of the surplus or shortfall and shall pay for such *Goods* at the prorata Contract rate.
- 4.4 The *Vendor* may deliver the *Goods* by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.5 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the *Customer* to repudiate or cancel any other Contract or instalment.
- 4.6 The *Customer* shall be deemed to have accepted the *Goods* after seven (7) days after delivery unless the *Vendor* is otherwise advised in writing.

## **5.0 None Delivery**

- 5.1 The quantity of any consignment of *Goods* as recorded by the *Vendor* or its agent upon Order from the *Vendor* or the *Vendor's* agent's place of business shall be conclusive evidence of the quantity received by the *Customer* on delivery unless the *Customer* can provide conclusive evidence proving the contrary.
- 5.2 If for any reason the *Customer* fails to accept delivery of any of the *Goods* when they are ready for delivery, or the *Vendor* is unable to deliver the *Goods* on time because the *Customer* has not provided appropriate instructions, documents, licences or authorisations:
  - (a) risk in the *Goods* shall pass to the *Customer* (including for loss or damage caused by the *Vendor's* negligence);
  - (b) the *Goods* shall be deemed to have been delivered; and

- (c) the *Vendor* or its agent may store the *Goods* until delivery, whereupon the *Customer* shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.3 The *Vendor* shall not be liable for any non-delivery of *Goods* (even if caused by the *Vendor's* negligence) unless the *Customer* gives written notice to the *Vendor* of the non-delivery within seven (7) days of the date when the *Goods* would in the ordinary course of events have been received.
- 5.4 Any liability of the *Vendor* for non-delivery of the *Goods* shall be limited to replacing the *Goods* within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such *Goods*.

## **6.0 Order Cancellation**

- 6.1 The *Customer* may not cancel any order or part of any order which is due for delivery within forty five (45) days. The *Customer* may not cancel an order where the *Vendor* has already begun the process of customization and where the Product has been rendered impossible to resell in the process. Any cancellation request will only be accepted by written notice provided *Customer* pay to the *Vendor* a 10% cancellation fee.
- 6.2 If you commit any breach of these Terms or if:
  - (a) The *Customer* has a bankruptcy order made against the *Customer* or the *Customer* makes an arrangement or composition with the *Customer's* creditors, or convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the *Customer* or the *Customer's* directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the *Customer* winding-up or for the granting of an administration order in respect of the *Customer's* business, or any proceedings are commenced relating to the insolvency or possible insolvency of the *Customer's* business; or
  - (b) the *Customer* suffers or allow any execution, whether legal or equitable, to be levied on the *Customer* or obtained against the *Customer*, or you fail to observe or perform any of your

obligations under the Contract or any other contract between the *Customer and Vendor*, or the *Customer is* unable to pay the *Customer's* debts within the meaning of section 123 of the Insolvency Act 1986 or the *Customer* cease to trade; or

(c) the *Customer* encumbers or in any way any of the Products

the *Vendor* may, at its discretion, cancel the contract between the *Customer and Vendor*.

## **7.0 Risk & Title**

7.1 The *Goods* shall be at the *Customer's* risk as from delivery. In spite of delivery having been made property in the goods shall not pass to the *Customer* until:

- a) The *Customer* have paid the price plus value added tax in full; and
- b) No other sums whatever shall be due from the *Customer* to the *Vendor*.

7.2 Until property in the *Goods* passes to the *Customer* the *Goods* and each of them shall be held by the *Customer* on a fiduciary basis as bailee for the *Vendor*.

7.3 The *Customer* shall store the *Goods* (at no cost to the *Vendor*) separately from all other *Goods* in the *Customer's* possession and marked in such a way that they are clearly identified as the *Vendor's* property.

7.4 Notwithstanding that the *Goods* (or any of them) remain the *Vendor's* property the *Customer* may sell or use the *Goods* in the ordinary course of the *Customer's* business at full market value for the *Vendor's* account. Any such sale or dealing shall be a sale or use of the *Vendor's* property by the *Customer* on the *Customer's* own behalf and the *Customer* shall deal as principal when making such sales or dealings.

7.5 Until property in the *Goods* passes from the *Vendor* the entire proceeds of sale or otherwise of the *Goods* shall be held in trust for the *Vendor* and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the *Vendor's* money.

7.6 The *Vendor* shall be entitled to recover the price (plus value added tax) notwithstanding that property in any of the *Goods* has not passed from the *Vendor*.

7.7 Until such time as property in the *Goods* passes from the *Vendor* the *Customer* shall upon request deliver up to the *Vendor* such of the *Goods* as have not ceased to be in existence or resold. If the

*Customer* fails to do so the *Vendor* may enter upon any premises owned occupied or controlled by the *Customer* where the *Goods* are situated and repossess the *Goods*. the *Customer* authorises the *Vendor* to repossess the *Goods* from any other premises where the *Goods* may be situated from time to time provided always that the *Vendor* has the consent of the person who owns, occupies or controls such premises to enter thereon. On the making of a request by the *Vendor* to the *Customer* to deliver up such *Goods* the *Customer's* rights to sell, use or otherwise deal with the *Goods* shall cease.

- 7.8 The *Customer* shall not pledge or in any way charge by way of security for any indebtedness any of the *Goods* which are the *Vendor's* property. Without prejudice to the *Vendor's* other rights, if he *Customer* does so all sums whatever owing by the *Customer* to the *Vendor* shall forthwith become due and payable.
- 7.9 The *Customer* shall insure and keep insured the *Goods* to the full price against 'all risks' to the *Vendor's* reasonable satisfaction until the date that property in the *Goods* passes from the *Vendor*, and shall whenever requested by the *Vendor* produce a copy of the policy of insurance. Without prejudice to the *Vendor's* other rights, if the *Customer* fails to do so all sums whatever owing by the *Customer* to the *Vendor* shall forthwith become due and payable.
- 7.10 The *Customer* shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the *Vendor's* other rights, if the *Customer* fails to do so all sums whatever owing by the *Customer* to the *Vendor* shall forthwith become due and payable.

## **8.0 Fees & Payment**

- 8.1 The price of any *Goods* will be as set out in the quotation form, except in cases of obvious error.
- 8.2 These prices are quoted inclusive of packaging, loading, unloading and carriage but exclusive of VAT, delivery and insurance, the costs of which will be added to the total amount due.
- 8.3 Prices are liable to change at any time, but changes will not affect orders in respect of which the *Vendor* has already sent the *Customer* an Order Confirmation.
- 8.4 Subject to condition 8.2, payment of the price for the *Goods* is due in pounds sterling five (5) days following the date of the invoice we send you.
- 8.5 An invoice shall be sent to you on the date of order of the *Products*.

- 8.6 Time for payment shall be of the essence.
- 8.7 No payment shall be deemed to have been received until the *Vendor* has received cleared funds.
- 8.8 All payments payable to the *Vendor* under the Contract shall become due immediately on its termination despite any other provision.
- 8.9 We are under no obligation to provide the *Goods* to you at the incorrect (lower) price even after we have sent you an Order Confirmation.
- 8.10 Payment for Products may be made by bank transfers or cheque.
- 8.11 The *Customer* shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by the *Vendor* to the *Customer*.
- 8.12 The *Vendor* reserves the right to take any of the following courses of action if the *Customer* fails to pay the *Vendor* any sum due pursuant to the Contract:
- (a) to charge the *Customer* a one-off administration fee of £50.00; and
  - (b) to charge the *Customer* any costs relating to debt collection charges incurred by the *Vendor* because of the *Customer's* late payment; and
  - (c) to claim interest from the *Customer* on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank, accruing on a daily basis until payment is made, whether before or after any judgment; and
  - (d) to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **9.0 Quality**

- 9.1 Where the *Vendor* is not the manufacturer of the *Goods*, the *Vendor* shall endeavour to transfer to the *Customer* the benefit of any warranty or guarantee given to the *Vendor*.
- 9.2 The *Vendor* warrant that (subject to the other provisions of these conditions) upon delivery and for a period of one hundred and eighty (180) days from the date of delivery, the *Goods* shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

- 9.3 The *Vendor* shall not be liable for a breach of the warranty in condition 9.2 unless:
- (a) the *Customer* give written notice of the defect to us, within 7 days of the time when you discover or ought to have discovered the defect; and
  - (b) the *Vendor* is given a reasonable opportunity after receiving the notice of examining such *Goods* and the *Customer* (if asked to do so by the *Vendor*) return such *Goods* to the *Vendor's* place of business at the *Customer's* cost for the examination to take place there.
- 9.4 The *Vendor* shall not be liable for a breach of the warranty in condition 10.2 if:
- (a) the *Customer* make any further use of such *Goods* after giving such notice; or
  - (b) the defect arises because the *Customer* failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the *Goods* or (if there are none) good trade practice; or
  - (c) the *Customer* alter or repair such *Goods* without the *Vendor's* written consent.
- 9.5 Subject to condition 9.3 and condition 9.4, if any of the *Goods* do not conform with the warranty in condition 9.2 the *Vendor* shall at the *Vendor's* option repair or replace such *Goods* (or the defective part) or refund the price of such *Goods* at the pro rata Contract rate.
- 9.6 Where the *Vendor* elects to replace a defective *Goods* the *Vendor* reserve the right to supply the replacement *Goods* without the original customisation features.
- 9.7 If the *Vendor* complies with condition 9.5 the *Vendor* shall have no further liability for a breach of the warranty in condition 9.2 in respect of such *Goods* and any *Goods* replaced shall belong to the *Vendor*.

## **10.0 Liability**

- 10.1 Subject to the other provisions of these Terms the *Vendor* shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the *Products* (even if caused by our negligence), nor shall any delay entitle the *Customer* to terminate or rescind the Contract unless such delay exceeds 180 days.

- 10.2 The *Vendor* shall not be liable for injury or adverse effects caused through use of the *Goods* beyond that expected from normal use.
- 10.3 Where the *Customer* has requested the *Vendor* to transfer the *Customer's* data onto a Product the *Vendor* shall not be liable for the content or the quality of such data or the quality or effectiveness of its transfer.
- 10.4 The *Vendor's* liability for losses the *Customer* suffers as a result of the *Vendor* breaking this agreement is strictly limited to the purchase price of the *Goods* the *Customer* purchased.
- 10.5 This does not include or limit in any way our liability:
- (a) for death or personal injury caused by the *Vendor's* negligence;
  - (b) under section 2(3) of the Consumer Protection Act 1987;
  - (c) for fraud or fraudulent misrepresentation; or
  - (d) for any matter for which it would be illegal for the *Vendor* to exclude, or attempt to exclude, the *Vendor's* liability.

## **11.0 Import Fees & Duty**

- 11.1 If the *Customer* orders Goods from the *Vendor* for delivery outside the UK, the *Customer* may be subject to import duties and taxes which are levied when the delivery reaches the specified destination. The *Customer* will be responsible for payment of any such import duties and taxes. Please note that the *Vendor* has no control over these charges and cannot predict their amount. Please contact the local customs office for further information before placing an order.
- 11.2 Please also note that the *Customer* must comply with all applicable laws and regulations of the country for which the products are destined. The *Vendor* will not be liable for any breach by the *Customer* of any such laws.

## **12.0 Communication**

- 12.1 The *Customer* accepts that communication with the *Vendor* will be mainly electronic. The *Vendor* will contact the *Customer* by e-mail or provide the *Customer* with information by posting notices on the *Vendor's* website. For contractual purposes, the *Customer* agrees to this electronic means of communication and the *Customer* acknowledges that all contracts, notices, information and other communications that the *Vendor* provides to the *Customer* electronically comply with any legal requirement that such communications be in writing. This condition does not affect the *Customer's* statutory rights.

- 12.2 All notices given by the *Customer* to the *Vendor* must be sent either via email to sales@newmediabranding.com or to New Media Branding Ltd, 46 Alliance Way, Paddock Wood, Tonbridge, Kent, TN12 6TT
- 12.3 Notices will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

### **13.0 Transfer of Rights and Obligations**

- 13.1 The contract between the *Customer* and the *Vendor* is binding on the *Customer* and the *Vendor* and on the *Vendor's* respective successors and assigns.
- 13.2 The *Customer* may not transfer, assign, charge or otherwise dispose of a Contract, or any of the *Customer's* rights or obligations arising under it, without the *Vendor's* prior written consent.
- 13.3 The *Vendor* may transfer, assign, charge, sub-contract or otherwise dispose of a Contract, or any of the *Vendor's* rights or obligations arising under it, at any time during the term of the Contract.

### **14.0 Force Majeure**

- 14.1 The *Vendor* will not be liable or responsible for any failure to perform, or delay in performance of, any of The *Vendor's* obligations under a Contract that is caused by events outside the *Vendor's* reasonable control.
- 14.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond the *Vendor's* reasonable control and includes in particular (without limitation) the following strikes, lock-outs or other industrial action (whether or not relating to the *Vendor's* workforce); civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; fire, explosion, storm, flood, earthquake, subsidence, epidemic, adverse weather conditions or other natural disaster or acts of God; impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; impossibility of the use of public or private telecommunications networks; and the acts, decrees, legislation, regulations or restrictions of any government.
- 14.3 The *Vendor's* performance under any Contract is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of

that period. The *Vendor* will use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which the *Vendor's* obligations under the Contract may be performed despite the Force Majeure Event.

## **15.0 Waiver**

15.1 If the *Vendor* fails, at any time during the term of a Contract, to insist upon strict performance of any of your obligations under the Contract or any of these Terms, or if the *Vendor* fails to exercise any of the rights or remedies to which the *Vendor* is entitled under the Contract, this shall not constitute a waiver of such rights or remedies and shall not relieve the *Customer* from compliance with such obligations.

## **16.0 Severability**

16.1 If any of these Terms or any provisions of a Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## **17.0 Entire Agreement**

17.1 These Terms and any document expressly referred to in them represent the entire agreement between the *Vendor* in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between the *Customer* and the *Vendor*, whether oral or in writing.

## **18 Right to Vary These Terms and Conditions**

18.1 The *Vendor* has the right to revise and amend these Terms from time to time in order to, without limitation, reflect changes in market conditions affecting the *Vendor's* business, changes in technology, changes in payment methods and changes in relevant laws and regulatory requirements.

18.2 The *Customer* will be subject to the policies and Terms in force at the time that the *Customer* order *Goods* from the *Vendor*, unless any change to those policies or these Terms are required to be made by law or governmental authority (in which case it will apply to orders previously placed by the *Customer*), or if the *Vendor* notifies the *Customer* of the change to those policies or these Terms before the *Vendor* sends the *Customer* the Order Confirmation (in which case the *Vendor* has the right to assume that the *Customer* has accepted the change to the Terms, unless the *Customer* notifies the *Vendor* to the contrary within seven (7) working days of receipt by the *Customer* of the *Goods*).

## **19.0 Law and Jurisdiction**

- 19.1 Contracts for the purchase of the *Vendor's Goods* will be governed by English law. Any dispute arising from, or related to, such Contracts shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.