

BOOTH GROUP TERMS & CONDITIONS

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods and/or services from the Company.

Company: means THE BOOTH GROUP and any of its trading subsidiaries or related companies, and where relevant any sub-contractor of it.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions or the provision of the services.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Services: any services agreed in the Contract to be rendered to the Buyer by the Company.

1.2. A reference to a [particular] law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. Words in the singular include the plural and in the plural include the singular.

1.4. A reference to one gender includes a reference to the other gender.

1.5. Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1. Subject to any variation under condition 2.3 the Contract shall 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 on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods and /or Services shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4. Each order or acceptance of a quotation for Goods or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods or Services subject to these conditions.

2.5. No order placed by the Buyer 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 or provides services to the Buyer.

2.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

3. DESCRIPTION

3.1. The quantity and description of the Goods or Services shall be as set out in the Company's quotation or acknowledgement of order.

3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They shall not form part of the Contract and this is not a sale by sample.

4. SERVICES

4.1. The Company warrants to the Buyer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Contract. However any date or time stated in the Contract shall constitute a statement of expectation only and shall not be binding. Accordingly the time of supply of the Service shall not be of the essence of the Contract. Where the Company supplies in connection with the provision of the Services any services or any goods (including Output Material) supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Buyer the benefit of any warranty, guarantee or indemnity given by the person supplying the services or goods to the Company.

4.2. The Company 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 Company's obligations in relation to the Service, if the delay or failure was due to any cause beyond the Company's reasonable control.

4.3. The Company makes no representation as to the benefit to the Buyer arising out of the provision of the Service and there is neither expressed nor shall there be implied into the Contract any conditions or warranties as to the same

4.4. The Buyer agrees to indemnify the Company in respect of all claims, costs, damages, loss or other charges falling upon the Company as a result of the negligent act or omission of the Buyer or any of its servants or agents.

4.5. The Company shall not consider any claim made against it in respect of any alleged failure or default in the provision of services unless the Buyer notified the Company within seven days of the relevant failure. The Company's liability in such circumstances shall be limited to the cost of rectifying the failure or the net price at which the Service is provided to the Buyer, whichever is the lesser.

4.6. If the Company shall be prevented or hindered from supplying the Service or any part thereof by any circumstances beyond its reasonable control performance of the Contract shall be suspended for so long as the Company is so

prevented or hindered provided that if the performance of the Contract shall be suspended for more than six consecutive calendar months the Company shall be entitled by notice in writing to the Buyer forthwith to terminate the Contract or cancel any outstanding part thereof and in such circumstances the Buyer shall pay at the rate specified in these conditions for all the Services supplied to the actual date of such termination. The Company shall not have any liability to the Buyer for any direct or consequential loss or damage suffered by the Buyer as a result of the Company's inability to perform its obligations under the Contract in these circumstances mentioned above.

5. DESCRIPTION OF WASTE

5.1. The Buyer shall provide to the company a description of any waste which it requires the Company to remove / receive prior to The Buyer delivering or the Company collecting any waste from the Buyer. The Buyer shall warrant the accuracy of the description to the Company.

5.2. Should the description be inaccurate in any material way then the Buyer shall indemnify the Company for any loss the Company so suffers howsoever caused as a result of such inaccuracy.

5.3. The Company shall at its discretion following receipt of the description decide to proceed with the contract, analyse the waste or terminate the contract.

5.4. Should the Company decide to analyse the waste (either itself or by a third party) then upon receipt of such analysis it shall at its reasonable discretion decide to proceed with the contract or terminate the contract.

5.5. Should the Company decide to terminate the contract pursuant to this clause then the Buyer shall collect from the Company any waste it delivered or had delivered or which the Company collected pursuant to this contract within 24 hours of the Company notifying it that the contract has been terminated.

5.6. Should the Buyer not collect the waste pursuant to clause 5.5 then the Company shall at its discretion effect the return or disposal of the waste itself or by way of a third party and the Buyer shall indemnify the Company for all costs the Company shall so incur.

6. DELIVERY

6.1. The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

6.2. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

6.3. Subject to the other provisions of these conditions the Company 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 Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

6.4. If for any reason the Buyer 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 Buyer has not provided appropriate instructions, documents, licences or authorisations:

6.4.1. risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

6.4.2. the Goods shall be deemed to have been delivered; and

6.4.3. the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6.5. The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and/or unloading the Goods.

6.6. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

6.7. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

6.8. The Company shall be entitled to determine the route and manner of delivery of the Goods and shall for the purpose of Section 32(2) of the Sale of Goods Act 1979 be deemed to have the Buyer's authority to make such contract with any carrier as to the Company may seem reasonable. If the route involves sea transit the Company shall not be obliged to give the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979.

6.9. Where the Goods are handed to a carrier for carriage to the Buyer or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of Sections 44, 45 and

46 of the Sale of Goods Act 1979.

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6.10. No liability (whether in contract, for negligence or otherwise howsoever) for non-delivery, loss or damage to the Goods occurring prior to delivery or for any claim that Goods are not in accordance with the contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Goods) will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods) within seven days of delivery for loss, damage or non-compliance with the contract or;

6.11. In the event of a valid claim for loss, damage or non-compliance with the contract the Company undertakes as its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non delivery, loss, damage or non-compliance;

6.12. If the Buyer shall fail to give notice in accordance with Clause 6.10 above the Goods shall be deemed to be in all respects in accordance with the contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of loss, damage or non-compliance shall (save as set out in clauses 12 and 13 below) thereafter be wholly barred.

7. NON-DELIVERY

7.1. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company'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.

7.2. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

7.3. Any liability of the Company 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.

8. RISK/TITLE

8.1. The Goods are at the risk of the Buyer from the time of delivery.

8.2. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

8.2.1. the Goods; and

8.2.2. all other sums which are or which become due to the Company from the Buyer on any account.

8.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall:

8.3.1. hold the Goods on a fiduciary basis as the Company's bailee;

8.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

8.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

8.3.4. 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 Buyer shall produce the policy of insurance to the Company.

8.4. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

8.4.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

8.4.2. any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

8.5. The Buyer's right to possession of the Goods shall terminate immediately if:

8.5.1. the Buyer 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 documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its 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 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; or

8.5.2. 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 or perform any of his/its obligations

8.5.3. under the Contract or any other contract between the Company 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

8.5.4. the Buyer encumbers or in any way charges any of the Goods.

8.6. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

8.7. The Buyer 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 Buyer's right to possession has terminated, to recover them.

8.8. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

8.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition shall remain in effect.

9. PRICE

9.1. Unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price set out in the Company's price list published on the date of delivery or deemed delivery and are exclusive of VAT; this will be payable by the Buyer at the appropriate rate. Should delivery or receipt be made by way of instalments, the price payable for each instalment shall be the list price current on the date of delivery or receipt. Should an invoice have been raised prior to delivery or receipt then the Company may raise a further invoice to reflect any change in price on delivery.

9.2. The price for the Goods 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 shall pay in addition when it is due to pay for the Goods.

10. RETURNS

10.1. Goods cannot be returned without the Company's prior written agreement and must be in the same condition as when delivered; in such circumstances the Goods shall be returned to the Company's place of business at the Buyer's expense, subject to a handling charge which will be set by the Company in each case.

11. PAYMENT

11.1. Payment of the price for the Goods or Services is due in pounds sterling 30 days following the date of the invoice, or such other terms as shall be agreed in writing by a Director of the Company.

11.2. Time for payment shall be of the essence.

11.3. No payment shall be deemed to have been received until the Company has received cleared funds.

11.4. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

11.5. If the goods or services are delivered or received in instalments the Company shall be entitled to invoice each instalment as and when delivery or receipt has been made and payment shall be due in respect of each instalment where a delivery or receipt has been made notwithstanding non-delivery of other instalments under default on the part of the Company and should there be any default by the Buyer the payment of any instalment due or failure to give delivery instructions in respect of any quantity of goods undelivered then the whole balance of the price for all goods shall become due immediately.

11.6. The Buyer 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 the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

11.7. If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Natwest Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

12. QUALITY

12.1. Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

12.2. The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall:

12.2.1. be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

12.2.2. be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.

12.3. The Company shall not be liable for a breach of the warranty OR any of the warranties in condition unless:

12.3.1. the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect;

12.3.2. the Company is given a reasonable opportunity after receiving the notice of examining such Goods; and

12.3.3. the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

12.4. The Company shall not be liable for a breach of the warranty OR any of the warranties in condition if:

12.4.1. the Buyer makes any further use of such Goods after giving such notice; or

12.4.2. the defect arises because the Buyer failed to follow the Company's 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

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12.4.3. the Buyer alters such Goods without the written consent of the Company.

12.5. Subject to condition clause 6, if any of the Goods do not conform with the warranty OR any of the warranties in condition 12 the Company shall at its option replace such Goods (or the defective part) or refund the price of such

Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.

12.6. If the Company complies with clause 12.5 it shall have no further liability for a breach of the warranty OR any of the warranties in clause 12 in respect of such Goods.

12.7. Where goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.

12.8. For the avoidance of doubt, subject to clause 12.2, the Company does not warrant the fitness of the goods for any purpose or the quality of the goods or the correspondence of the goods with any description or sample.

13. LIMITATION OF LIABILITY

13.1. Subject to clauses 4, 5, 6, 7, 8 and 12, the following provisions set 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 Buyer in respect of:

13.1.1. any breach of these conditions;

13.1.2. any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;

13.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract; and

13.1.4. the provision of any service.

13.2. 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 the Supply of Goods and Services Act 1982 or the Sale of Goods Act 1979

(as amended) as against the Buyer if he is dealing as a consumer (as defined by section 12 of the Unfair Contract Terms Act 1977)) are, to the fullest extent permitted by law, excluded from the Contract.

13.3. Nothing in these conditions excludes or limits the liability of the Company:

13.3.1. for death or personal injury caused by the Company's negligence; or

13.3.2. under section 2(3), Consumer Protection Act 1987; or

13.3.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

13.3.4. for fraud or fraudulent misrepresentation.

13.4. Subject to condition 13.2 and condition 13.3:

13.4.1. 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 the Contract price; and

13.4.2. the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14. ASSIGNMENT

14.1. The Company may assign the Contract or any part of it to any person, firm or company.

14.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

15. FORCE MAJEURE

15.1. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) 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, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

16. DEFAULT / INSOLVENCY / CANCELLATION

16.1. If the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution should be levied on the Buyer's property or assets or if the Buyer shall or offer any arrangement or composition with its creditors or commit any act of bankruptcy petition be presented against him or (if the Buyer is a Company) if any resolution or petition to wind up such Company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such companies undertaking property or assets shall be appointed the Company in its discretion and without prejudice to any other right or claim may by notice in writing to determine wholly or in part any and every contract between the Company and the Buyer or may without prejudice to the Company's rights subsequently to determine the contract of the same or should it so decide by notice in writing suspending all further deliveries (as may be the case) of goods until any defaults by the buyer are remedied.

16.2. Save as it provided in this clause and clause 13 above any agreement may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify losses resulting from the said cancellation.

17. GENERAL

17.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

17.2. 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.

17.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

17.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

17.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17.6. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

17.7. This agreement constitutes the entire agreement between the parties with respect to the matters dealt with herein and supersedes any previous agreement between the parties in relation to such matters. Save in respect of statements made fraudulently they have no rights or liabilities in respect of pre-contractual statements. Any variation of this agreement must be in writing and signed by a Director of the Company.

18. COMMUNICATION

18.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

18.1.1. (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

18.1.2. (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

18.2. Communications shall be deemed to have been received:

18.2.1. if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

18.2.2. if delivered by hand, on the day of delivery; or

18.2.3. if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

18.3. Communications addressed to the Company shall be marked for the attention of "The Chief Executive"