

ZEST GRAPHICS: TERMS AND CONDITIONS FOR THE SALE AND SUPPLY OF GOODS AND SERVICES

1. DEFINITIONS

Company	Signs in Bristol Limited trading as Zest Graphics and Vehicle Wrapping
Conditions	These terms and conditions as amended from time to time
Contract	The contract between the Company and the Customer for the sale of Goods and/or supply of Services in accordance with these Conditions
Consumer	A Customer dealing as a consumer within the meaning of section 25 Unfair Contract Terms Act 1977 or section 3 Consumer Protection (Distance Selling) Regulations 2000
Customer	The person firm or entity purchasing the Goods and/or Services from the Company
Deposit	Such sum as shall be notified by the Company in writing
Due Date	Has the meaning set out in clause 5.4
Good	All goods particulars of which are set out in the Order and provided subject to these Conditions
Material Order	has the meaning set out in clause 4.1(g) the Customer's order for Goods or Services as set out in the Customer's purchase order form whether completed electronically on the Company's website or in paper form or the Customer's written acceptance of a quotation by the Company, or as otherwise set out in writing between the Company and the Customer or as agreed orally as the case may be
Price	the price payable for the Goods and/or Services as specified in the Order or as the Company advises in a quotation or estimate calculated in accordance with the Company's published prices from time to time and whether given orally or in writing plus VAT Services the services particulars of which are set out in the Order and which the Company is to provide in accordance with these Conditions.

2. BASIS OF CONTRACT

- 2.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Company in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when in the case of the supply of Services the Company provides written or oral acceptance of the Order or indicates acceptance by attendance at the premises at which the Services are to be provided and in the case of the sale of Goods when the Company dispatches the Goods at which point and on which date the Contract shall come into existence.
- 2.3. The Conditions shall apply to the Contract to the exclusion of all other terms and conditions and no variation to these Conditions shall be binding unless agreed in writing by an authorised representative of the Company. Customers requiring changes to the Conditions must ask that they be made in writing.
- 2.4. When purchasing Goods from the Company's website the Customer acknowledges that its use of the website is subject to the Company's privacy policy, acceptable use policy and website terms of use.
- 2.5. Any quotation given by the Company shall not constitute an offer, and is only valid for a period of thirty (30) days from its date of issue.
- 2.6. All artwork produced for the Customer shall continue to be the intellectual property of the Company unless transferred in writing. Should the Customer wish to purchase from the Company the right to use this artwork, it may do so for a sum of no less than £200.00 (two hundred pounds) plus any applicable VAT. Unauthorised use of artwork shall constitute an offer to purchase the rights to use this artwork from the Company for £200.000 (two hundred pounds) plus any applicable VAT. This offer shall be valid for a period of 2 (two) years and may not be revoked by the Customer during this period.

3. ORDERS AND DELIVERY AND/OR PERFORMANCE

- 3.1. The Company shall use reasonable endeavours to supply the Goods and/or Services to the Customer in accordance with the Order in all material respects.

- 3.2. Where specific colour matches are required by the Customer the Customer must notify the Company of these matches in writing. The Company does not warrant that any graphics produced are produced to specific colour matches unless these matches are included in the Quotation.
- 3.3. The Company shall provide the Customer with reasonable notice of the dates for delivery of Goods and/or performance of Services but all dates stated are approximate only and the Company shall not be liable for any reasonable delay in delivery and/or performance or for any delay arising from the Customer's failure to provide the Company with full and accurate information or for delay arising as a result of any other customer default.
- 3.4. The Company shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law safety requirement or other statutory requirement or which do not materially affect the nature or quality of the Goods and/or Services.
- 3.5. Unless otherwise agreed in writing by the Company the Price excludes transportation and delivery costs and any expenses including but not limited to travel and subsistence costs incurred by the Company in providing the Services to the Customer. Any alteration to the Order required by the Customer must be notified to the Company promptly in which case the Company may accept such alteration (subject to any increase in the Price to reflect the alteration) in its sole discretion.
- 3.6. The Company shall be entitled to provide the Services itself or through such employees agents or sub-contractors as it shall deem appropriate.
- 3.7. Where a cost is provided as an estimate, the Company shall, in the event that the costs exceed the estimate given, charge for costs at their real (as opposed to estimated) level, up to a maximum of 300% of that estimation of cost. Where a cost is provided as a quotation AND the quotation or its accompanying documentation does not expressly state that a given cost is an estimate, costs shall be charged at the rate quoted.

4. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) ensure that the information it provides at the request of the Company is complete and accurate;
- (b) co-operate with the Company in all matters relating to the provision of the Services;
- (c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises or the premises at which the Services are to be performed and other facilities as reasonably required by the Company;
- (d) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) take such action as the Company may reasonably specify to prepare the premises at which the Services are to be provided ready for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (g) subject to clause 6.2 the Customer shall keep and maintain all materials, equipment, documents and other property of the Company (Materials) at the Customer's premises in safe custody at its own risk, maintain the Materials in good condition until returned to the Company, and not dispose of or use the Materials other than in accordance with the Company's written instructions or authorisation;
- (h) follow all advice and instructions given by the Company regarding health and safety of humans and animals in relation to Goods and/or Services;
- (i) take all such follow up action as the Company shall recommend following the performance of the Services.

5. PRICE AND PAYMENT

- 5.1 The Company shall be entitled to invoice the Customer for:
 - (a) the Deposit and VAT at the rate prevailing on the date of the Invoice or at any time following acceptance of the Order;
 - (b) the balance of the Price and VAT (or instalments thereof by way of interim invoices) at the rate prevailing on the date of the invoice or at any time following delivery of the Goods and/or performance of the Services; and

- (c) any transportation or delivery costs or other costs reasonably incurred by the Company in delivering the Goods and/or performing the Services and VAT at the rate prevailing on the date on which the expenses were incurred as appropriate.
- 5.2 Any increase in the cost to the Company necessitating an increase in the Price which is a result of any change in specification of the Goods and/or Services which is requested by the Customer or as a result of any delay caused by any instructions of the Customer or failure of the Customer to give to the Company adequate information or instructions shall not entitle the Customer to cancel the Contract on receipt of a written notice of such increase in the Price.
- 5.3 The Customer shall pay the Company's invoices as may be rendered from time to time on receipt of the invoice unless an alternative period for payment is specified on the invoice ("the Due Date"). Time of payment shall be of the essence.
- 5.4 Without limiting any other right or remedy of the Company, if the Customer fails to make any payment due to the Company under the Contract by the Due Date the Company shall have the right to:
- (a) Cancel the Contract and/or suspend any future deliveries of Goods or performance of Services whether under this Contract or under any other contract between the Company and the Customer and/or remove any Goods from the Customer;
- (b) charge interest on the overdue amount at the rate of five percent (5%) per cent per annum above the then current Royal Bank of Scotland base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount (a part of month being treated as a full month for the calculation of interest)
- 5.5 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part 6.
- 5.6 Should the Customer seek to cancel the Contract, all deposits yet to be paid shall continue to be due, and no deposits paid to the Company shall be under any circumstances refundable.
6. WARRANTIES AND LIABILITIES
- 6.1 The Company warrants to the Customer that the Services will be provided using reasonable care and skill and that the Goods will be of satisfactory quality fit for purpose and free of material defects.
- 6.2 The Company warrants that where it uses hazardous Materials in the performance of Services it shall take appropriate steps to comply with any safety guidance issued in respect of those Materials and where the Customer may come into contact with the Materials or may store the Materials on its premises the Company shall advise the Customer of any safety guidance issued in respect of the Materials.
- 6.3 The Company's liability in the event of breach of the above warranties shall be to replace or repair any defective Goods and/or to remedy any defects in connection with the Services.
- 6.4 The Company shall be under no liability under any warranty condition or guarantee if the Price and VAT has not been paid by the Due Date.
- 6.5 The Company shall not be responsible for any defects in Goods and/or Services supplied to Customers other than where the Customer is dealing as Consumer unless notified to the Company in writing within a period of thirty (30) days from delivery to the Customer. If the Customer shall fail to give such notice then the Goods and/or Services shall be deemed to be in all respects in accordance with the Contract
- 6.6 Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or fraud or fraudulent misrepresentation;
- 6.7 Subject to clause 6.1:
- (a) the Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract.
- (b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the value of the Contract.
- 6.8 The Customer warrants that it shall at all times comply with its obligations under the Contract and acknowledges that if the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
- (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in clause 6.8; and
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 6.9 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.10 The statutory rights of any Customer dealing as Consumer are not affected by the Conditions.
- 6.11 This clause 6 shall survive termination of the Contract.
- 6.12 Signature of the Company's delivery note shall constitute the Customer's acceptance of the goods and services provided and the Customer shall have no claim against the Company for failure properly to complete the works or otherwise except as arising from a warranty made under this clause 6.
7. TITLE AND RISK
- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any provision of these Conditions the property in the Goods shall not pass to the Customer until the Company has received in actual cleared funds payment in full of the Price and VAT and the price of all other goods agreed to be sold by the Company to the Customer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Customer the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer other than a Customer dealing as Consumer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods .
- 7.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Company does so all monies owing to the Company by the Customer shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
8. TERMINATION
- 8.1 Without prejudice to any other right or remedy available to it the Company shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability on the part of the Company to the Customer and if Goods and materials are in transit the Company shall be entitled to stop those Goods and materials and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary in the event that:-
- (a) the Customer fails to pay any amount due under the Contract by the Due Date; or
- (b) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or a firm) becomes bankrupt or goes into liquidation (otherwise for the purposes of amalgamation or reconstruction); or
- (c) an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer; or the Customer ceases or threatens to cease to carry on business; or

- (e) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 8.2 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party three (3) month's written notice
- 8.3 Upon termination of the Contract the Company shall render an invoice in respect of any part of the Price and any expenses which have yet to be invoiced and that invoice shall be payable immediately upon receipt by the Customer. The Customer shall immediately pay to the Company any sums due under any invoice raised on termination along with any other outstanding unpaid invoices and the Customer shall return to the Company all Materials. Failure by the Customer to return all Materials shall entitle the Company to enter the premises to take possession of the Materials.
- 8.4 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 8.5 Any purchase of Goods from the Company's website made by a Customer dealing as a Consumer shall be subject to the Customer Protection (Distance Selling) Regulations 2000. A Customer dealing as Consumer shall be entitled to cancel the Contract within seven (7) working days of receiving the Goods by giving written notice to the Company. For the sake of certainty it is suggested that such notice be sent by recorded delivery. The Customer is responsible for ensuring that reasonable care is taken of all Goods whilst they remain in the Customer's possession. In the event of cancellation in such circumstances any monies paid by the Customer for those Goods in respect of which the Customer is cancelling the Contract together with any delivery charges paid in respect of those Goods only shall be refunded. Goods must be returned undamaged and will be returned at the Customer's own cost and risk.

9. GENERAL

- 9.1 Neither party shall be liable for any delay in performing or failure to perform (other than a payment obligation) due to any act of god war strike lock-out industrial action fire flood drought tempest or any other event beyond the reasonable control of either party. Such delay or failure will not constitute a breach of this Contract and time for the performance of the affected obligations will be extended by such period as is reasonable.
- 9.2 The Company may at any time upon providing reasonable notice to the Customer assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract. The Customer shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 9.3 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business. Notices to the Company are to be addressed to Zest Graphics, Monarch House, 7 Smyth Rd, Bristol BS3 2BX.
- 9.4 No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 9.5 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 9.6 Save as otherwise provided nothing in this Contract shall confer on any third party any benefit of the right to enforce any terms of this Contract.
- 9.7 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 irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.