

In these conditions the following expressions shall have the following meanings:-

“the Supplier” means Floramedia UK Ltd of Axis Two, Brunel Way, Severalls Business Park, Colchester, Essex, CO4 9QX.

“the Customer” means the company business or person or persons described as such on the face hereof or otherwise contracting with the Supplier for the supply of goods and/or services.

“Contract” means a contract for the provision of services and/or sale of goods between the Supplier and the Customer.

“Conditions” means the terms and conditions set out or referred to in this document.

1. GENERAL

1.1 All Contracts shall be upon these Conditions. All orders are accepted on these Conditions, which supersede any other terms in the Supplier’s brochures or elsewhere, and shall override and exclude any other terms stipulated or incorporated or referred to by the Customer, whether in the order or in any negotiations and any course of dealing established between the Supplier and the Customer.

1.2 These Conditions shall not be varied or added to by reference, incorporation or otherwise unless such variations or additions have been made by express written agreement between the Supplier and the Customer and signed by the Supplier and the Customer. The signing by the Supplier of any of the Customer’s documentation shall not imply any modification of these terms.

1.3 The Supplier reserves the right to correct any clerical or typographical errors made by its employees at any time.

1.4 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2. FORMATION

2.1 Subject to Clause 3.4 below no contract for the sale of goods and/or services shall be concluded until the Supplier has issued an acknowledgement of order form or (if earlier) the Supplier delivers the goods and/or services to the Customer.

2.2 The quantity and description of the goods and/or services shall be as set out in the Supplier’s quotation or acknowledgement of order form.

3. PRICES

3.1 The prices for any goods and/or services supplied by the Supplier to the Customer will be those set out on the face hereof subject to the provisions of Clause 3.2.

3.2 The Supplier shall at any time be entitled to increase the price for goods on the face hereof:-

(a) should the Customer alter its specification or instructions after the date of quotation or the Supplier otherwise has to alter modify or otherwise carry out work on any goods;

(b) should there be any increase in the cost to the Supplier of purchasing any goods or materials by reason of any foreign exchange fluctuations, alterations in any taxes or duties, variations in the costs of raw materials or components or labour or transport or by reason of any other cause whatsoever (whether or not of the same nature as the foregoing) beyond the control of the Supplier.

3.3 All prices quoted by the Supplier are:-

(a) ex-works and therefore exclusive of Value Added Tax and the Customer shall pay any and all taxes, duties and other government charges payable in respect of the goods, together with transport and insurance costs of the Supplier valid from time to time for delivery of the goods to the Customer;

(b) net and shall not be subject to any discount.

3.4 Quotations are subject to withdrawal at any time before receipt of an unqualified order from the Customer and shall be deemed to be withdrawn if not so accepted within 7 days from their date unless otherwise stated in writing by the Supplier at the time of quoting.

4. PRELIMINARY WORK

4.1 All work carried out at the Customer's request shall be charged and shall be paid for by the Customer forthwith on demand or in advance if the Supplier so requires.

4.2 A charge may be made to cover any additional work involved where copy supplied by the Customer is not clear or legible.

4.3 The Supplier shall incur no liability for any uncorrected errors on proofs submitted by the Supplier for Customer approval and the Customer shall be solely responsible for the accuracy of the goods produced on the basis of those proofs and shall indemnify and keep indemnified on a continuing basis and hold harmless the Supplier from and against any and all liabilities, losses, damages, costs, charges, expenses (including, without limitation, legal expenses), actions, proceedings, claims and demands incurred by or brought against the Supplier for errors and/or omissions in those goods. The cost of any additional proofs which are required shall be in addition to the quoted price and where items are left to the Supplier's discretion and alterations to those items shall be an addition to the quoted price.

5. PAYMENT

5.1 Accounts shall be due for payment not later than 30 days after the date of invoice unless an alternative agreement is reached and advised in writing by the Supplier prior to delivery of the goods. No payment shall be deemed to have been received until the Supplier has received cleared funds.

5.2 Without prejudice to the right of the Supplier to payment in accordance with the terms of payment contained in Clause 5.1, the Supplier shall at its discretion have the right to charge interest in respect of all or any outstanding sums from the due date of payment until payment in full (including all interest due) is received by the Supplier. Interest shall be payable at the rate of 2 per cent. above the base rate from time to time of Barclays Bank per calendar month and shall accrue from day to day. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5.3 If payment is overdue in whole or in part then the whole of any amounts outstanding to the Supplier shall immediately become payable whether or not such monies would have been payable at that time but for the provisions of this Clause 5.3.

5.4 The Customer shall make all payments in immediately available funds without any withholding, deduction, set-off or counterclaim.

5.5 Time of payment by the Customer is of the essence.

5.6 The Customer shall purchase at the Contract price all stocks, finished or unfinished, which the Supplier holds for the purpose of meeting the Customer's requirements under the Contract even if the Contract is terminated for whatever reason.

5.7 The Supplier reserves the right to cancel credit accounts that fall below a turnover (excluding VAT) of £500.00 - per annum.

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

6. WARRANTY

6.1 Subject to the provisions of this Clause 6 and of Clause 7 the Supplier warrants goods supplied by the Supplier to the Customer to be free from defect in materials and workmanship for a period of 90 days from the day of delivery.

6.2 The above warranty shall not apply to:-

(a) any goods which are modified by the Customer;

(b) any goods which are improperly used by the Customer;

(c) any goods which are damaged by the Customer whether by accident, neglect, failure to follow instructions concerning the use of the goods whether given in any document supplied with the goods or otherwise;

(d) any normal wear and tear;

(e) any goods which the Customer continues to use after giving notice in accordance with Clause 6.4.

6.3 Subject to Clause 6.6 all conditions warranties, terms, undertakings and obligations whether express or implied by statute, common law, custom, trade usage or otherwise (including, without prejudice to the generality of the foregoing, any implied condition, warranty or undertaking as to correspondence of the goods with any contract description given, satisfactory quality or fitness for any particular purpose) are hereby wholly excluded.

6.4 All goods which become defective during the warranty period and which fall within the terms of the warranty are to be returned to the Supplier for repair or replacement. The Customer must notify the Supplier in writing within 10 days of it becoming aware of the defect of its intention to return such goods, and the goods are to be returned at the time and to the location specified by the Supplier following such notification. Goods in transit to the Supplier for the purpose of repairs under the warranty shall be at the Customer's risk. The Customer shall be responsible for the cost of returning the goods to the Supplier.

6.5 Save as specifically provided in this Clause 6, the Supplier shall not be liable to the Customer or to any other person for any loss or damage of whatsoever nature or howsoever arising and, in particular, the Supplier expressly excludes liability for any indirect or consequential loss suffered or claimed by the Customer or any third party.

6.6 Nothing in these Conditions shall exclude, restrict or limit any liability of the Supplier under the applicable law in respect of liability which cannot under that law be excluded, restricted or limited such as, without limitation, in relation to liability for death or personal injury resulting from negligence or breach of duty.

6.7 Subject to Clauses 6.3 and 6.6:

(a) the Supplier'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

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

7. CUSTOMER'S SPECIFICATION AND MATERIAL

7.1 Where goods are made to the Customer's specification, instruction or design, the Customer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and the fact that it is not illegal, unlawful or defamatory and undertakes to indemnify the Supplier and keep the Supplier indemnified on a continuing basis against any infringement of any registered design, trade mark, trade name, copyright or other intellectual property rights and against all losses, damage or expense which it may incur by reason of such infringement or of any matter printed for the Customer being unlawful, illegal or defamatory.

7.2 Where materials are supplied or specified by the Customer:-

(a) the Supplier may reject any paper, plates or other materials supplied or specified by the Customer which it considers to be unsuitable or likely to result in civil or criminal proceedings. In the event that any such materials prove unsuitable during production the Supplier reserves the right to adjust the price of any goods by an amount equal to any increase in the cost of the production suffered by the Supplier as a consequence;

(b) no liability for defective goods is accepted by the Supplier where such defect has arisen wholly or partly as a result of or out of use of materials supplied by or whose use is directed by the Customer;

(c) quantities of materials supplied by the Customer shall be sufficient to cover normal spoilage.

8. DELIVERY/COLLECTION

8.1 Where goods are to be delivered by the Supplier to the Customer, such goods will be delivered to the ground floor of the location set out on the face hereof or otherwise notified by the Customer to the Supplier and agreed by the Supplier. Unless it is otherwise agreed in writing, such goods shall be delivered by means chosen by the Supplier. The Customer shall provide at its expense adequate and appropriate equipment and manual labour for loading and/or unloading the goods.

8.2 The Supplier will make every effort to avoid delay but no responsibility is undertaken for meeting any specific delivery dates. Accordingly, time shall not be of the essence in respect of delivery times and dates and no liability will be accepted by the Supplier 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, which may be caused directly or indirectly by delayed delivery (even if caused by the Supplier's negligence) and whether brought about by a cause beyond the control of the Supplier or not nor shall any delay entitle the Customer to terminate or rescind the Contract.

8.3 The Supplier shall be entitled to deliver the goods in one or more consignments unless otherwise expressly agreed in writing. Each separate consignment shall be invoiced and paid for in accordance with the provisions of the Contract. Each consignment shall be a separate Contract and no cancellation or termination of any one Contract relating to a consignment shall entitle the Customer to repudiate or cancel any other Contract or consignment.

8.4 The Customer shall inspect the goods immediately on delivery thereof and shall within 10 days from such delivery give notice to the Supplier in writing of any matter or thing by reason whereof the Customer may allege that the goods are not in accordance with the Contract or are defective in material or workmanship. If the Customer shall fail to give such notice the goods shall be conclusively presumed to be in all respects in accordance with the Contract and free from any defect which would be apparent on reasonable examination of the goods and the Customer shall be deemed to have accepted the goods accordingly. In the event that the Customer establishes to the Supplier's reasonable satisfaction that the goods are not in accordance with the Contract or are so defective, the Supplier may elect to repair the goods or to replace the goods or to refund the purchase price at the pro-rata Contract rate against return of the goods. Whilst the Supplier shall endeavour to deliver the quantity of goods ordered, the Customer accepts the following margins of shortfall or excess and shall not be entitled to object to or reject the goods or any of them by reason of surplus or shortfall:- Up to 50,000: one colour only, 5 per cent., others 10 per cent. 50,000 plus: one colour only, 4 per cent., others 8 per cent. In such eventuality the price for the goods shall be adjusted at the run-off rate and the Supplier shall be deemed not to be in breach of these Conditions.

8.5 The quantity of any consignment of goods as recorded by the Supplier on despatch from the Supplier'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.

8.6 The Supplier shall not be liable for any non-delivery of goods (even if caused by the Supplier's negligence) unless the Customer gives written notice to the Supplier of the non-delivery within 5 days of the date when the goods would in the ordinary course of events have been received.

8.7 Any liability of the Supplier for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or issuing a credit note at the prorata Contract rate against any invoice raised for such goods.

8.8 If the goods are lost or damaged in transit notification must be given by the Customer to the carrier and the Supplier in writing of the loss or damage within 2 days of delivery.

8.9 Where goods are to be collected by the Customer, the Supplier shall notify the Customer of availability of such goods for collection by written notice of availability. Such goods shall be collected within 7 days of the date of such notice of availability. If the Customer fails to collect the goods within such 7-day period or if the Supplier 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 loss or damage caused by the Supplier's negligence);
- (b) the goods shall be deemed to have been delivered; and
- (c) the Supplier may store the goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including without limitation, storage and insurance), or the Supplier may at its option rescind the Contract and the Customer shall be liable for any costs, losses or expenses arising from the Customer's failure to collect such goods.

8.10 The Supplier may at its option cancel or suspend (or suspend and later cancel) all further deliveries or collections under the Contract in the event of (a) default by the Customer in making any payment due under the Contract or under any other contract between the Supplier and the Customer; or (b) being a natural person, the Customer shall die or become bankrupt or have a receiver appointed over the whole or part of his or her assets or propose to enter or enters into any formal or informal arrangements with his or her creditors; or (c) being a company, the Customer or any of the Customer's affiliates becomes subject to any form of winding-up, administration, receivership, administrative receivership, insolvency proceedings, arrangements with creditors generally, enforcement of security or repossession; or (d) being a partnership, anything analogous to those events specified in (b) and (c) above occurring to the Customer; or (e) anything similar or analogous to any of the foregoing shall occur under the laws of any applicable jurisdiction.

9. PASSING OF RISK

9.1 All goods to be delivered to the Customer shall be at the Customer's risk from the time of delivery of the goods to the Customer.

9.2 All goods to be collected by the Customer shall be at the Customer's risk from the time of collection.

9.3 Risk in all property and materials of the Customer supplied to the Supplier by or on behalf of the Customer shall at all times remain with the Customer.

9.4 The Supplier shall not be liable for any loss of any kind to the Customer arising from any damage to the goods occurring after the risk has passed to the Customer howsoever caused, nor shall any liability of the Customer to the Supplier be diminished or extinguished by such loss.

10. RETENTION OF TITLE

10.1 Property in the goods shall not pass to the Customer until all sums due to the Supplier from the Customer have been paid in full or cleared funds. Until such payment the Customer shall hold the goods as bailee for the Supplier and shall so far as reasonably practicable store the goods so that they are readily identifiable as the property of the Supplier.

10.2 No sum shall be treated as paid until any cheque or other instrument of payment given by the Customer has been met on representation or otherwise honoured in accordance with its terms. The Supplier may sue for the whole of the price at any time after it has become payable. Payments shall be applied to invoices in the order in which they were issued and to goods in the order in which they are listed in invoices.

10.3 The Customer may as agent for the Supplier sell and deliver the goods to a third party in the course of the Customer's business on condition that until such payment the Customer shall, subject to Clause 10.4, hold the proceeds of such sale on trust for the Supplier.

10.4 The trust declared in Clause 10.3 shall be void if and to the extent that a trust in like terms arises by operation of law in favour of the Supplier.

10.5 The Customer shall :-

- (a) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods;
- (b) maintain the goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request, the Customer shall produce the policy of insurance to the Supplier;
- (c) not pledge the goods or allow any lien to arise thereon;
- (d) not deal with or dispose of the goods or any interest therein other than by a sale to any independent purchaser buying for full value in the ordinary course of the Customer's business;
- (e) not hold itself out as the Supplier's agent in respect of the goods whether selling on its own account or not.

10.6 The Customer's right to possession of the goods shall terminate immediately if:-

- (a) the Customer defaults in the punctual payment of any sum owing to the Supplier then the Supplier shall be entitled to the immediate return of all goods sold by the Supplier to the Customer in which the property has not passed to the Customer;
 - (b) the Customer 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 Customer or notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - (c) the Customer 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 under the Contract or any other contract between the Supplier and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - (d) the Customer encumbers or in any way charges any of the goods, and the Customer hereby authorises the Supplier to recover the goods or documents and grants an irrevocable right and licence to the Supplier to enter any premises of the Customer for the above purposes or to inspect them as the Supplier shall in its absolute discretion decide. Demand for or recovery of the goods or documents by the Supplier shall not of itself discharge either the Customer's liability to pay the whole of the price and take delivery of the goods or the Supplier's right to sue for the whole of the price.
- 10.7 On termination of this Contract, howsoever caused, the Supplier's (not the Customer's) rights contained in this Clause 10 shall remain in effect.

11. FORCE MAJEURE

11.1 The Supplier shall be relieved of all liability otherwise arising under these Conditions to the extent that it shall be unable to carry out any of its obligations hereunder by reason of any cause whatsoever beyond its control and reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of goods ordered by the Customer as it shall in its absolute discretion decide.

12. FORBEARANCE

12.1 No forbearance, indulgence, time or relaxation on the part of the Supplier granted to the Customer in respect of any of these Conditions shall in any way affect, diminish, restrict or prejudice rights or powers of the Supplier under this Agreement or operate as or be deemed to be a waiver of any breach by the Customer of any of these Conditions.

13. NOTICE

13.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by facsimile transmission to the address of the party shown on the face hereof or such other address as the party may by notice to the other have substituted therefor and shall be deemed validly and effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

14. SEVERANCE

14.1 In the event of any Condition or any part of any Condition being determined to be invalid, unlawful or unenforceable to any extent, such Condition or part of such Condition shall be severed from the body of any Contract made upon these Conditions and the remainder of such Contract shall continue to be valid and enforceable to the fullest extent permitted by law.

15. ASSIGNMENT

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

15.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

16. PROPER LAW

16.1 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.

16.2 Any Contract between the Supplier and the Customer shall be given by and construed in accordance with English Law and the Customer submits to the exclusive jurisdiction of the English Courts but the Supplier may enforce any judgment in any Court of competent jurisdiction.