

# Terms & Conditions of Sale

The following conditions outlined below represent the only contractual terms upon which RJ Bryant trading as bcreative (otherwise known as bcreative from here-on) is prepared to deal with its customers.

It will govern all contracts for the supply of goods and/or service(s), formed by bcreative's acceptance of a customer order or a customer's acceptance of bcreative's quotation to the exclusion of any other contractual terms including any which a customer attempts to introduce. Important: These terms and conditions of sale are subject to change. All quoted rates take effect from 1st April 2011, however, please check that they are the rates currently applicable.

Fees shall be charged at the prevailing rates.

**1.00 GENERAL TERMS** for both the following conditions of sale and all future correspondence.

**1.01** "You" and "Your" means the person or company submitting an order for goods or services.

**1.02** "Us", "Our" and "We" means bcreative.

**1.03** "Goods" means all items and services both physical and non-physical to be supplied under the following conditions as stated on Our quotation and/or order acknowledgement, as appropriate.

**1.04** The Contract for the supply of Goods ("Contract") will be formed upon Your acceptance of Our quotation or Our acceptance of Your order. However, We only agree to sell Goods to You subject to their availability, and accordingly the Contract may be cancelled by Us in writing without liability to You if Goods cannot within a reasonable period of time be acquired by Us for resale.

**1.05** WE MAY PRIOR TO ANY MEETING, CORRESPONDENCE OR ACCEPTANCE OF ANY ORDER, CARRY OUT A CREDIT CHECK AND THEN OR LATER RESERVE THE RIGHT TO CANCEL AN ORDER IF WE ARE UNSATISFIED WITH THE RESULTS OF SUCH A CHECK. YOU CONFIRM THAT YOU ARE HAPPY FOR US TO CARRY OUT SUCH A CHECK ON ACCEPTANCE OF OUR QUOTATION OR OUR ACCEPTANCE OF YOUR ORDER.

**1.06** These conditions may only be modified by a written variation signed by Robert Bryant (business owner). No other action by Us (including the delivery of Goods) is to be construed as Our acceptance of any other condition.

**1.07** These conditions, together with any matters referred to on Our quotation, order acknowledgement or any such correspondence, as appropriate, embody the entire understanding of all parties concerned and supersede any prior promises, representations, undertakings or implications.

**1.08** Any omission or error in any sales literature, web page, web site, order form, quotation, price list, order acknowledgement, despatch note, credit note, invoice or other document (whether written, or oral or in electronic form) issued by Us or Our employees, Our representatives or Our sub-contractors may be corrected by Us without liability.

**1.09** The provisions of the Contracts (Rights of Third Parties) Act 1999, are expressly excluded from the Contract.

**1.10** Throughout these stated terms and conditions and throughout all sales literature, web page, web site, order form, quotation, price list, order acknowledgement, despatch note, credit note, invoice or other document and all correspondence and all advertised literature, words in the singular include and may also reference the plural and vice versa.

**1.11** YOUR ATTENTION IS IN PARTICULAR DRAWN TO CONDITIONS 2.0, 3.0, 6.0, 7.0, 8.0 and 10.0.

## 2.00 WARRANTY

**2.01** WE WILL SO FAR AS WE ARE REASONABLY ABLE PASS ON TO YOU THE BENEFIT OF ALL WARRANTIES RECEIVED BY US FROM THE MANUFACTURER AND SUPPLIER OF THE GOODS YOU HAVE PURCHASED.

**2.02** WE CANNOT AND WILL NOT ACCEPT ANY LIABILITY WHATSOEVER FOR ANY DEFECT OR ERROR WITH GOODS OTHER THAN WHERE THIS HAS BEEN CAUSED BY OUR NEGLIGENCE OR FAULT.

**2.03** WE WARRANT THAT GOODS AT THE TIME OF DELIVERY BE FREE FROM DEFECTS IN WORKMANSHIP AND MATERIALS AND CORRESPOND IN ALL MATERIAL RESPECTS WITH THE RELEVANT ORDER SPECIFICATION.

If any Goods do not conform to this WARRANTY then We will at Our option either repair the defect in question, replace the defective Goods or refund the price of the defective Goods. This remedy is the only remedy available to You through a breach of this WARRANTY and is only available on condition that:

a] YOU NOTIFY US IN WRITING OF THE DEFECT WITHIN 7 DAYS OF DELIVERY, OR IN THE CASE OF DEFECTS NOT APPARENT ON REASONABLE INSPECTION WITHIN 28 DAYS OF DELIVERY.

b] DEFECTIVE GOODS ARE RETURNED TO US WITHIN 7 DAYS OF WRITTEN NOTIFICATION; AND

c] OUR EXAMINATION OF THE DEFECTIVE GOODS AT OUR PREMISES DISCLOSES TO OUR SATISFACTION THAT THE DEFECT HAS NOT BEEN CAUSED BY 1] YOUR MISUSE, NEGLIGENCE, FAILURE OR INADEQUATE MAINTENANCE, ACCIDENT, IMPROPER STORAGE, INSTALLATION OR HANDLING, OR 2] REPAIR OR ALTERATION BY A THIRD PARTY.

**2.04** Where Goods are returned under condition 2.01 We will bear the cost of delivering any repaired or replacement Goods to You.

WE WILL NOT BE LIABLE TO ANY DELIVERY COSTS WHERE NO REMEDY IS AVAILABLE UNDER CONDITION 2.01.

**2.05** Goods returned by You to Us for any reason must be returned in their original packaging in substantially the same condition as they were delivered to You and must bear a return identification number clearly visible on the exterior (such number to be obtained from Us prior to return of Goods by You). We will not accept liability for Goods returned without such identification number.

## 3.00 LIMITATION OF LIABILITY

**3.01** NONE OF THESE CONDITIONS AFFECTS THE STATUTORY RIGHTS OF A CONSUMER AS DEFINED UNDER THE UNFAIR CONTRACT TERMS ACT 1977. ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS NOT CONTAINED IN THESE CONDITIONS AND IMPLIED BY STATUE OR LAW ARE EXCLUDED OR RESTRICTED TO THE FULLEST EXTENT PERMITTED.

**3.02** THIS CONDITION AND CONDITION 2.00 STATES OUR ONLY LIABILITY TO YOU UNDER OR IN CONNECTION WITH THE CONTRACT.

**3.03** WITHOUT PREJUDICE TO CONDITION 3.04, WE WILL NOT BE LIABLE TO YOU BY WAY OF REPRESENTATION (UNLESS FRAUDULENT), COMMON LAW DUTY OR UNDER ANY EXPRESS OR IMPLIED TERM OF THE CONTRACT FOR:

a] ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OR LOSS OF PROFITS (WHETHER CAUSED BY OUR NEGLIGENCE OR THAT OF OUR EMPLOYEES, AGENTS, SUB-CONTRACTORS OR OTHERWISE) ARISING IN CONNECTION WITH THE SUPPLY OF GOODS AND RELATED SERVICES OR THEIR USE BY YOU.

b] ANY LOSS OR RETRIEVAL OF DATA, IT BEING YOUR RESPONSIBILITY TO KEEP ADEQUATE BACK-UP COPIES OF DATA AND PROGRAMS HELD OR USED BY YOU OR ON YOUR BEHALF.

**3.04** OUR ENTIRE LIABILITY IN CONNECTION WITH THE CONTRACT WILL NOT EXCEED THE ACTUAL PURCHASE PRICE OF THE GOODS IN QUESTION.

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## 4.00 PRICE

**4.01** The price for Goods will be that stated on Our quotation or order acknowledgement (as appropriate), or, if no price is stated, Our list price last published on the date upon which Goods are dispatched to You. We may vary the price to the extent that the cost to Us of acquiring or supplying Goods is increased between the date of quotation or order acknowledgement (as appropriate) and delivery including, without limitation, increases in the costs of carriage, packaging or insurance or arising in a change in exchange rate, a change in delivery dates, quantities or specifications for Goods requested by You or delay caused by Your instructions.

**4.02** Prices quoted by Us are, unless otherwise stated exclusive of

- a) VAT or any similar taxes, levies or duties,
- b) the costs of carriage, delivery, packaging and insurance, and
- c) Our handling charges, all of which will be added to or charged on invoices at appropriate rates and paid by You.

**4.03** WE RESERVE THE RIGHT TO AMEND PRICES OF GOODS AND SERVICES WITHOUT PRIOR NOTICE. WE WILL HONOUR PRICES SUBMITTED ON OUR QUOTATION OR ORDER ACKNOWLEDGEMENT (AS APPROPRIATE) TO YOU EXCEPT FOR CIRCUMSTANCES BEYOND OUR CONTROL, HAS DESCRIBED IN CONDITION 4.01 AND CONDITION 4.02.

**4.04** A minimum price of £85 is to be charged on all orders accepted by Us. Included in this charge is the first hour of project development, first set of concept visuals and/or laser proofs and a back-up copy of COMPLETED artwork files onto CD or by other suitable media.

## 5.00 PAYMENT

**5.01** Unless otherwise agreed in writing, You must pay for Management Fees in advance and Goods within 30 days of receipt of Our invoice by such means that We may notify You of. Payment by cheque is deemed to have been made only upon such cheque having cleared and a transfer of funds have been completed.

**5.02** Where any payment to be made by You under the Contract is not made by its due date then, without prejudice to Our other rights and remedies, We may:

- a) Charge interest on the outstanding amount (as well after as before judgement) on a day to day basis at an annual rate of 5% above the HSBC Bank plc's base rate, applicable until the sum due is paid.
- b) Withhold further deliveries of Goods, suspend performance of the Contract and/or Withhold guarantees on previously supplied Goods until arrangements as to payment or credit have been established on terms which are satisfactory to Us.

**5.03** Where Goods are to be delivered in instalments, each delivery constitutes a separate Contract and failure by Us to deliver any one or more of the instalments in accordance with these conditions or any claim by You in respect of any one or more instalments will not entitle You to treat the Contract as a whole as repudiated.

**5.04** All invoices shall be paid in full, free from any deduction for any set-off, counterclaim or otherwise howsoever.

## 6.00 DELIVERY

**6.01** Delivery of Goods shall be made by Us to the place designated by You in the accepted order or quotation, as appropriate.

Delivery will be made during normal business hours.

**6.02** Unless otherwise expressly agreed in writing, any delivery date or time specified by Us in any quotation, despatch note or otherwise is a best estimate only and We will not be liable to You for any loss or damage sustained by You as a result of Our failure to comply with such time scale.

**6.03** If You pass or have a resolution passed for Your winding-up, a receiver is appointed over the whole or any part of Your undertaking, an administration order is made against You, You enter into or propose to enter into any arrangement with Your creditors, become unable to pay Your debts (or have no reasonable prospect of doing so), suffer a bankruptcy order or commit a material breach of the Contract, then We may without prejudice to any other right immediately terminate the Contract, suspend or cancel further delivery and/or recover Goods from You from which payment has not been received.

**6.04** Where You refuse to accept delivery of an order, for whatsoever reason, We reserve the right, in addition to any other claim We may have, to charge You 2.5% of the Prompt Settlement Price of the order to cover the cost of carriage of the refused delivery both to and from Your delivery address and the administrative costs involved.

**6.05** We shall repair or replace, free of charge any Goods damaged or lost in transit where delivery has been made by Our carrier, provided that You comply with condition 2.03[a] so that We may comply with Our carrier's conditions of carriage.

## 7.00 RISK AND RETENTION OF TITLE

**7.01** RISK OF GOODS SHALL PASS TO YOU UPON DELIVERY.

**7.02** Title of software and computer programming language solutions shall not pass to You unless agreed otherwise in writing. Title in Goods shall not pass to You until their full price and the full price of any other Goods which are the subject of any other Contract between You and Us has been paid. Until title passes, Goods shall be:

- a) Stored by You at Your premises in such a manner that they are clearly identifiable as being Our property.
- b) They should be housed in suitable conditions and properly insured against any risk or damage.
- c) Handed over to Us on demand. We may re-take possession of such Goods and reserve the right to enter onto Your premises for such purposes.

**7.03** You may sell or distribute the Goods in the ordinary course of business and on commercially reasonable terms on the basis and understanding that the proceeds of sale are the property of, and held in trust to Us.

**7.04** Verbal notice of shortage, non-delivery, damage or pilferage is not acceptable. We must be informed in writing. If You fail to pay for any Goods in accordance with these conditions We may bring action against You for the price of the Goods at any time notwithstanding that title in Goods has not passed to You.

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## 8.00 APPARENT DEFECTS

**8.01** If the quantity of Goods delivered does not correspond to the quantities required to be delivered in that consignment You may not reject that consignment and may only:

a) (If the quantity delivered exceeds the Contract quantity) You may return the excess or retain the whole, in which the latter case, the price shall be adjusted at the Contract rate then prevailing.

b) (If the quantity delivered is less than the Contract quantity) require a further delivery of Goods to make up the deficiency or (at Our option) a refund of the appropriate part of the purchase price.

**8.02** These rates are only available however where condition 2.01 is also satisfied.

**8.03** You shall have no claim for the fact that Goods delivered are of the wrong description unless condition 2.01 is also satisfied.

## 9.00 SPECIFICATION

**9.01** All drawings, photographs, illustrations, specifications, performance data, dimensions and the like used in Our sales literature, on web pages or other documentation have been provided by Us in the belief that they are accurate. However they do not constitute a description of the Goods, shall not be taken to be representations made by Us and are not warranted to be accurate.

**9.02** The specification for Goods may be changed at any time up to delivery and provided such change does not materially alter the functionality of the Goods You may not cancel Your order. We will not be liable for any loss or damage suffered in connection with any change. We will use Our reasonable endeavours to advise You on any such impending variation as soon as We are able or upon Our receiving notice of the same (as appropriate). THE ONUS IS ON YOU TO CHECK SPECIFICATIONS FOR GOODS PRIOR TO MAKING AN ORDER.

## 10.00 INTELLECTUAL PROPERTY RIGHTS

**10.01** We reserve the right to feature all Goods and services that We supply to You in all Our promotional material and marketing methods as either 'case studies' or features for promotion. With Your permission We will also publish Your comments as testimonials for all Our promotional material and marketing methods. We also reserve the right to feature contact details for bcreative on all web site and web page source code.

**10.02** We retain all copyright and title on all artwork until full payment has been received from You. On receipt of full payment copyright and title will transfer to You, however You will only receive title on all COMPLETED AND FLATTENED artwork files. All component files (layered computer graphics files etc.) shall remain the property of bcreative. These component files may be purchased from Us at any date upon joint satisfactory pricing levels.

**10.03** No right of intellectual property in any Goods is granted to or invested in You other the right to use the same. You will fully indemnify Us against all liabilities, costs and expenses resulting from any claim that Our use of any specification provided by You in connection with the Contract infringes the rights of a third party.

## 11.00 CANCELLATION

**11.01** YOU MAY NOT CANCEL THE CONTRACT WITHOUT OUR PRIOR WRITTEN CONSENT AND THEN ONLY ON CONDITION THAT YOU FORFEIT ANY DEPOSIT FOR THE GOODS AND REIMBURSE ANY LOSSES WE MAY SUFFER IN CONNECTION WITH THE CANCELLATION.

## 12.00 ASSIGNMENT

**12.01** We may freely assign, sub-Contract or otherwise transfer in whole or in part the Contract. You may not however do so without Our written consent.

## 13.00 FORCE MAJEURE

**13.01** We will not have any liability under the Contract.

We may cancel or reduce the volume of Goods to be delivered under it, if We are prevented from, or delayed in delivering or performance by any circumstances beyond Our reasonable control, including but not limited to industrial action, war, fire, prohibition or enactment of any kind, or failures or acts on the part of Our suppliers or sub-contractors or any other third parties (including Your bank).

## 14.00 ELECTRONIC COMMUNICATIONS

**14.01** For the purposes of condition 14.00, an "e-communication" means any communication electronically transmitted by You to Us via Our internet address or through Our web site, or by Us to Your internet address; "originating party" means the party transmitting an e-communication; and "receiving party" means the party receiving such a communication.

**14.02** Any e-communication will be deemed received, where You are the receiving party, upon arrival at Your mail box at the internet address apparent from Your order or, where We are the receiving party, when the e-communication is accessed by Us in intelligible form. The receiving party will promptly notify the originating party if an e-communication is received in unintelligible form provided that the originating party can be identified. In the absence of such notice, Our record of the contents of any such e-communication will prevail. Any Contract formed through the transmission of e-communications will be deemed to have been formed in England.

## 15.00 GOVERNING LAW

**15.01** The Contract is governed by the laws of England and the English courts shall have the non-exclusive jurisdiction to resolve any disputes arising out or under it.

**15.02** Notices required or permitted to be given under these conditions must be in writing (including without limitation by electronic mail) addressed to the relevant party at its registered office or principle place of business.

**15.03** No waiver by Us of any breach of the Contract by You is considered as a waiver of any subsequent breach of the same or any other provision. If any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these conditions and the remainder of the provision in question is not affected and shall continue to be valid and enforceable to the fullest extent permitted by the law.

## 16.00 VARIATIONS TO THESE TERMS SPECIFICALLY FOR OUR OFFER OF 'SMALL BUSINESS PACKAGES'

**16.01** Payment terms are 50% of the total quotation value including VAT with order prior to commencement of work. The full balance becoming due on delivery.

**16.02** Established 'Small Business Package' customers may be eligible for 30 day account terms, subject to status.