

## TERMS AND CONDITIONS

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

"Supplier" means **The Willow Wand Ltd, 20 Park Rd North, Newton 12 Wiltons, Warrington WA12 9TE**  
"Customer" means any company, business or person or persons contracting with the Supplier for the supply of goods and/or services and if made up of more than one person each such person's obligations hereunder shall be joint and several.  
"Contract" means a contract for the provision of services and/or sale of goods by the Supplier to the Customer.  
"Conditions" means the terms and conditions set out or referred to in this document.  
"Insolvency Event" shall mean any of the events described in clause 10.5(b).  
"Working Day" means any day other than a Saturday or Sunday on which banks in the City of London are ordinarily open for business.

## 1 GENERAL

- 1.1 All Contracts shall be upon these Conditions which supersede any other terms and exclude any terms introduced by the Customer. No signing by the Supplier of any of the Customer's documentation shall imply any modification of these terms.
- 1.2 These Conditions shall not be varied or added to unless such variations or additions are in writing between the Supplier and the Customer.

## 2 FORMATION OF CONTRACT

- 2.1 Quotations given by the Supplier are subject to withdrawal at any time before receipt of an order from the Customer and shall be deemed withdrawn if not accepted within 5 Working Days from their date unless otherwise stated in writing by the Supplier at the time of quoting.
- 2.2 Upon receipt of an order from any Customer, the Supplier will endeavour to issue an Acknowledgement of Order. Once it appears to the Supplier that the Customer's order has been agreed, it will either issue an Order Confirmation or where the order relates only to stock items simply deliver to the Customer the goods ordered.
- 2.3 The quantity and description of the goods and/or services shall be as set out in the Order Confirmation unless they shall have been delivered to the Customer without an Order Confirmation having been produced.
- 2.4 Once an Order Confirmation has been sent by the Supplier to the Customer or, if none, the goods have been supplied, a binding contract shall be concluded and the Customer shall be liable to pay the Price in accordance with the terms hereof notwithstanding any error contained in the Order Confirmation even if such error shall have been the Supplier's.
- 2.5 No contract for the sale of goods and/or supply of services shall be concluded until the Supplier has issued an Order Confirmation or (if earlier) the Supplier delivers the goods and/or services to the Customer. The Supplier's failure to issue an Acknowledgement of Order shall have no effect on the creation of a binding contract with the Customer.

## 3 PRICE

- 3.1 The price for any goods sold and/or services supplied by the Supplier to the Customer ("Price") will, subject to the provisions of Clause 3.2 below, be that set out in the Order Confirmation.
- 3.2 The Supplier shall be entitled to charge an amount in addition to the Price in the event that:
  - (a) the Customer shall seek at any time to change any part of its order set out in the Order Confirmation;
  - (b) there should be any increase in the cost to the Supplier of any goods, raw materials or components or labour or transport or by reason of any other cause whatsoever beyond the control of the Supplier;
  - (c) there shall be any additional cost in accordance with clause 7.2.
- 3.3 All prices quoted by the Supplier are:
  - (a) ex works and exclusive of Value Added Tax and the Customer shall pay all taxes, duties and other charges payable in respect of the goods, together with transport and insurance costs of the Supplier for delivery of the goods to the Customer;
  - (b) net and not subject to any discount.

## 4 PAYMENT

- 4.1 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 in respect thereof.
- 4.2 The Supplier shall be entitled to charge interest in respect of any outstanding sums from the due date of payment until payment in full (including all interest due). Interest shall be payable at the rate of 8 per cent above the base rate from time to time of the Bank of England and shall accrue daily. Alternatively, the Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.3 If payment is overdue in whole or in part, all amounts then outstanding to the Supplier shall immediately become payable whether or not such monies would have been payable but for this Clause 4.3.
- 4.4 The Customer shall make all payments in cleared funds without any withholding, deduction, set-off or counterclaim.
- 4.5 Time shall be of the essence in respect of payments under this clause 4.
- 4.6 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.
- 4.7 The Supplier reserves the right to cancel credit accounts that fall below a turnover (excluding VAT) of £500 per annum.
- 4.8 Upon the termination of the Contract for whatever reason, all sums then outstanding under the Contract shall become immediately due and payable.
- 4.9 Any payment by the Customer to the Supplier under the Contract shall be deemed to discharge the oldest debt then outstanding notwithstanding any stipulation to the contrary by the Customer.

## 5 WARRANTY

- 5.1 Subject to the provisions of this Clause 5 and of Clause 7 below the Supplier warrants goods supplied by it to the Customer to be free from defect in materials and workmanship for a period of 90 days from the day of delivery.
- 5.2 The above warranty shall not apply to:
  - (a) any goods which are modified or improperly used by the Customer or which are damaged by the Customer whether by its own acts or otherwise;
  - (b) any normal wear and tear; or
  - (c) any goods which the Customer continues to use after giving notice in accordance with Clause 5.4 below.
- 5.3 Subject to Clause 5.5 all terms implied by statute or otherwise (including any implied term as to title, correspondence of the goods with any contract description given, satisfactory quality or fitness for

- 5.4 any particular purpose) are excluded.
- 5.4 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 replacement. The Customer must notify the Supplier in writing within 5 working days of delivery 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 this purpose shall be at the Customer's risk. The Customer shall be responsible for the cost of returning the goods to the Supplier.
- 5.5 Nothing in these Conditions shall exclude, restrict or limit any liability of the Supplier in respect of liability which cannot under the law be excluded, restricted or limited such as liability for death or personal injury resulting from negligence or breach of duty.
- 5.6 Subject to Clauses 5.3 and 5.5, the Supplier's total liability in contract, tort or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price. The Supplier shall not in any circumstances be liable to the Customer for loss of profit, loss of business or depletion of goodwill, whether direct or indirect, or for any consequential loss which arises out of or in connection with the Contract.

## 6 PRELIMINARY WORK

- 6.1 All pre-contractual design and artwork carried out on behalf of the Customer shall be charged and paid for by the Customer forthwith or in advance if the Supplier so requires. A charge may be made to cover any additional work involved where copy supplied by the Customer is not clear or legible.
- 6.2 The Supplier shall not be liable for any errors in proofs submitted by it for the Customer's 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 the Supplier from and against all liabilities, losses, damages, costs and expenses (including, without limitation, legal expenses) incurred by the Supplier arising out of errors in those goods. The cost of any additional proofs which are required shall be in addition to the quoted price as will items left to the Supplier's discretion and alterations to those items shall be in addition to the quoted price.

## 7 CUSTOMER'S SPECIFICATION AND MATERIAL

- 7.1 Where goods are made to the Customer's specification, instruction or design, the Customer shall be fully responsible for the suitability and accuracy of the specification, instructions or design 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 and the Price shall increase accordingly;
  - (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.
- 7.3 The Supplier may in the course of its business use pictures and/or other images which are subject to the Supplier's copyright and the following shall apply. Where the Supplier uses images in Customer projects, those images remain subject to the Supplier's copyright and the Customer shall not be entitled to use them for any purpose including, but not limited to, using such pictures or images for internet or other digital promotion purposes. If the Customer wants to use pictures or images subject to the Supplier's copyright it must obtain express, prior, written consent from the Supplier.

## 8 DELIVERY

- 8.1 Where goods are to be delivered by the Supplier to the Customer, such goods shall be delivered to the location set out in the Order Confirmation 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. Any goods collected by the Customer from the Supplier shall be deemed to have been delivered at the time of collection.
- 8.2 Time shall not be of the essence in respect of delivery times by the Supplier. The Supplier shall be entitled to deliver the goods in one or more consignments. Each 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 rescind any other Contract or consignment.
- 8.3 The Customer shall inspect the goods immediately on delivery and shall within 5 Working Days from such delivery give notice to the Supplier in writing of any matter or thing by which the Customer may allege that the goods are not in accordance with the Contract or are defective. 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 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 defective, the Supplier may elect to replace the goods or to refund the purchase price at the pro-rata Contract rate against the return of the goods.
- 8.4 Whilst the Supplier shall endeavour to deliver the quantity of goods ordered, the Customer accepts a margin of error of up to 10% of the quantity contained in the Order Confirmation and shall not be entitled to object to or reject the goods or any of them by reason of any surplus or shortfall within this margin. In that event the price for the goods shall be adjusted at the run-off rate and the Supplier shall not be in breach of the Contract.
- 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.
- 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 Working Days of the date on which 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 pro-rata Contract rate against any invoice raised for such goods.
- 8.8 If the goods are lost or damaged in transit notification in writing must be given by the Customer to the carrier and the Supplier of the loss or damage within 2 days of delivery.
- 8.9 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) the Customer shall suffer an Insolvency Event; or (c) 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 or collected by the Customer shall be at the Customer's risk from the time of delivery or collection of the goods.
- 9.2 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.
- 9.3 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 under this Contract or any other contract have been paid in full in 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 separately from all other goods and so that they are readily identifiable as the Supplier's property.
- 10.2 The Customer shall have a licence to sell the goods to a third party in the ordinary course of the Customer's business on condition that, until payment of the Price to the Supplier, the Customer shall hold the proceeds of such sale on trust for the Supplier.
- 10.3 The trust declared in Clause 10.2 shall be subject to any trust in like terms arising by operation of law in favour of the Supplier.
- 10.4 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 nor allow any lien to arise over them;
  - (d) not deal with or dispose of the goods nor any interest in them other than by a sale to an 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.
- 10.5 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 in which event the Supplier shall be entitled to the immediate return of all goods sold by the Supplier to the Customer in which property has not passed to the Customer;
  - (b) the Customer has a bankruptcy order or a Debt Relief Order made against him or makes an arrangement or composition with his creditors, or (being a body corporate) convenes a meeting of creditors with a view to entering into liquidation or a petition is presented for liquidation (except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation), or has a receiver and/or manager appointed over its assets or 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 any person, or the Customer suffers or allows any execution to be levied on its property or obtained against it, or fails to observe or perform any of 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 suffers any event that would constitute "insolvency proceedings" under article 2(a) of the EC Regulation on Insolvency Proceedings 2000 (an "insolvency event"); or
  - (c) the Customer in any way encumbers 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.
- 10.6 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 (but not the Customer's) rights contained in this Clause 9 shall remain in effect.

## 11 MISCELLANEOUS PROVISIONS

- 11.1 FORCE MAJEURE: 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.
- 11.2 FORBEARANCE: 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.
- 11.3 NOTICE: Any notice given under or pursuant to the Contract may be sent by hand or by post or by electronic 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 (i) in the case of postal delivery on the next working day, (ii) in the case of personal service at the time of service and (iii) in the case of electronic delivery at the time of transmission.
- 11.4 SEVERANCE: 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.
- 11.5 ASSIGNMENT: The Supplier may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.
- 11.6 THIRD PARTIES: 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.
- 11.7 JURISDICTION: Any Contract between the Supplier and the Customer shall be governed 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.

The Willow Wand Ltd