

1 Definitions

- 1.1 In the context of these Standard Terms and Conditions of Business:
- 1.1.1 "the Seller" means Utter Creatives Ltd includes the Seller's duly appointed representatives or agents.
- 1.1.2 "Buyer" means any customer of the Seller whether a person, firm, or company (or any agent, or authorised representative of such person, firm, or company) purchasing Goods and/or Services from the Seller.
- 1.1.3 "contract" means a contract or order for the sale of Goods and/or supply of Services by the Seller to the Buyer.
- 1.1.4 "customer goods" means goods (other than Goods) supplied by a Buyer to the Seller which are to be stored and/or re-supplied to a Buyer in conjunction with Services to be performed or supplied by the Seller to a Buyer.
- 1.1.5 "delivery note" means the Seller's note detailing goods delivered and/or services supplied (as the case may be) to the Buyer.
- 1.1.6 "Goods" means all and any goods (other than customer goods), materials or products of whatsoever description digital or physical, supplied, sold or distributed by the Seller.
- 1.1.7 "Services" means all and any services of whatsoever description performed or supplied by the Seller for or to the Buyer, including (but without limitation) the Seller's promotional and marketing services and warehousing services but excluding informal advice provided by the Seller in respect of Goods purchased or to be purchased by the Buyer.
- 1.1.8 "Seller's promotional and marketing services" means all those services which involve the Seller promoting and marketing the Buyer's goods or services whether or not utilising Goods and/or customer goods.
- 1.1.9 "Conditions" means these terms and conditions and any of them.
- 1.1.10 The singular shall include the plural and vice versa and each of the male, female and neutral pronouns shall be interchangeable.
- 1.1.11 Headings are for convenience only and do not affect the construction and/or the interpretation of the Conditions.
- 1.1.12 Reference to any rule of law includes common law, statute or statutory regulations, applicable laws of the European Union and the decisions of any court of competent jurisdiction.
- 1.1.13 Reference to any statute includes any re-enactment or modification of such statute.
- ## 2 General
- 2.1 The Conditions apply to all contracts entered into by the Seller. No modification or variation of them shall be binding unless executed in writing.
- 2.2 The Conditions contain the entire terms and conditions of the contract between the Seller and Buyer and (subject to any rule of law incapable of being over-ridden) operate to displace any rule of law and terms and conditions imposed or sought to be imposed by a Buyer which might otherwise apply.
- 2.3 Failure by the Seller or by the Buyer at any time or times to require performance of any provision of the contract shall in no manner affect the rights of the Seller or the Buyer to enforce such provision at a later time in respect of the contract or otherwise.
- 2.4 No waiver by the Seller or the Buyer of any Condition or the breach of any term, covenant, representation, or warranty contained in the contract (whether express or given by conduct or otherwise) in any instance shall be deemed to be or construed as a further or continuing waiver of any Condition or breach or a waiver of any other Condition or deemed to be or construed as a breach of any other term, covenant, representation or warranty in the contract.
- ## 3 Samples and Examples
- 3.1 Any samples of Goods supplied to the Buyer shall be accepted by the Buyer as supplied solely for information.
- 3.2 Any examples of Services shown or supplied are for information only and shall not be deemed part of any contract. Any such examples do not imply any conditions warranties or terms in or to the contract concluded with the Buyer.
- 3.3 The Seller (subject always to any rule of law to the contrary) shall at all times be deemed to have satisfied all obligations upon it, whether expressed or implied, and whether arising by rule of law or otherwise as to the quality of the Goods supplied in the performance of the contract.
- ## 4 Validity
- 4.1 Any written quotation given by the Seller shall be valid for 28 days only unless otherwise specified in writing. No oral quotation shall be binding on the Seller.
- 4.2 No order is deemed to be accepted nor any contract made with the Seller until an acknowledgment of such order or contract in writing has been made by the Seller to or with the Buyer and the Seller's right is reserved (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery on the failure of any of the Buyer's obligations to the Seller. Upon such cancellation or suspension by the Seller or in the event of cancellation by the Buyer, the Seller shall, on demand, be indemnified by the Buyer against any loss or damage resulting there from.
- ## 5 Purchase Price and Payment
- 5.1 Payment in full for Goods and/or Services shall be made by the Buyer to the Seller in all cases strictly within 7 days of the date of the Seller's invoice. This will be minus the deposit paid upon completion of the order. Interest on overdue payments shall be charged daily by the Seller at the rate of five per cent per annum.
- 5.2 The prices quoted by the Seller are those prevailing at the time of quotation and all goods and services shall be invoiced at the prices ruling at the time of delivery unless otherwise agreed in writing between the Seller and the Buyer.
- 5.3 Should the buyer cancel/pull out mid-project they shall still be liable for the full amount of the project.
- 5.4 Should the buyer pause work, for over the period of 2 months then full payment must be made for the work completed to date.
- ## 6 Delivery of Goods and Performance of Services
- 6.1 Whilst delivery dates are given by the Seller in good faith based upon information available to the Seller, such dates are not guaranteed and the Seller accepts no liability for delay in delivery or completion of performance of Services whatsoever caused and no delay shall entitle the Buyer to reject any such delivery or any further installments or part of the order or to repudiate the contract or the order or any part thereof or to claim any damages or compensation in respect of any such delay.
- 6.2 In the absence of express agreement to the contrary the place of delivery

shall be the Seller's premises.

- 6.3 Non-delivery must be notified in writing also within 24 hours of the due date for delivery. The liability of the Seller shall be limited to the replacement of non-delivered goods provided written notice is given as required by this Condition.
- 6.4 If the Buyer fails to accept delivery, the Goods may be stored by the Seller at the Buyer's risk and expense until acceptance by the Buyer. Any storage and additional carriage costs shall be charged to the Buyer's account.
- ## 8 Cancellation
- 8.1 No order shall be cancelled either in whole or in part without the Seller's written consent. If a contract or order or any part thereof shall become impossible of performance or otherwise frustrated, the Seller shall be entitled to reasonable remuneration for work done until the date of such frustration.
- ## 9 Risk of Loss
- 9.1 The risk of loss or damage to Goods and customer goods shall pass or (in the case of customer goods) pass back to the Buyer when either:
- (i) the Goods and/or customer goods are released by the Seller from its premises to the Buyer or to any carrier authorised by the Seller or by the Buyer to collect the goods; or
- (ii) the Seller by its employees delivers the Goods and/or customer goods to the Buyer's or the Buyer's nominees premises specified in the delivery note and the delivery note is signed by the Buyer, his duly authorised representative or nominee.
- 9.2 The Buyer shall be responsible for all costs of insurance of the Goods and customer goods from the time that risk of loss passes to the Buyer.
- ## 10 Unforeseen Delay
- 10.1 The buyer should at all times insure themselves against any damage suffered by delay or loss. The buyer warrants that the seller is not liable for any loss or damage occurring from the agreement. Neither party shall be responsible for any losses resulting if the fulfilment of any term of the contract is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, delayed delivery to the Seller of materials, parts and/or accessories required for the delivery of the Goods, customer goods and/or Services to be provided under the contract, or by any other cause not within the control of the party whose performance is interfered with, and which, by the exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes enumerated or not. In the event of such a delay, the time of delivery shall be extended by the number of days of the delay which are caused by reasons beyond the control of the party so delayed.
- ## 11 Local Taxes
- 11.1 In case any tax or duty (including but not limited to import duty, VAT or other sales tax) should be imposed or collected under the laws of the country of the Buyer or any governmental unit thereof, whether now in existence or hereafter enacted, with respect to the Goods or the manufacture, purchase, sale or use thereof and/or Services which shall increase the cost to the Seller, then, and in every such event, the Seller shall have the right to increase the price of the Goods and/or Services to the extent necessary to meet such increased cost and the amount of any such tax may be included in the invoice for the Goods and/or Services to be provided under the contract or may be invoiced at a later date. For the avoidance of doubt the Buyer shall be responsible and liable for all import duties, VAT or other sales tax charged or levied on all goods ordered by the Buyer and sold to him by the Seller.
- ## 12 Warranties and Liability
- 12.1 Subject as expressly provided in the Conditions, and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by any rule of law are excluded to the fullest extent permitted by law, including (without limitation) all warranties, conditions or other terms implied by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.
- 12.2 Any claim by a Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with a particular specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 24 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.
- 12.3 Where a valid claim in respect of Goods based on any defect in their quality or condition or their failure to meet a particular specification is notified to the Seller in accordance with the Conditions, the Seller shall be entitled to repair or amend the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part thereof), but the Seller shall have no further liability to the Buyer.
- 12.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss of profit, turnover, goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services or their use or resale by the Buyer, except as expressly provided in the Conditions.
- 12.5 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
- 12.6 The Seller shall be under no liability in respect of any defect in goods arising after delivery to the Buyer from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's or manufacturer's instructions (whether oral or in writing), misuse or alteration, or repair of the Goods without the Seller's approval.
- ## 13 Retention of Title
- 13.1 In this Condition 13 the expression "goods" shall mean Goods and/or any materials or other things supplied by the Seller whether in the form in which collected by or delivered to the Buyer or whether or not combined with any other materials or things but such term shall exclude customer goods. If goods the property of the Seller are combined with goods the property of the Buyer or are incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Seller. If goods the property of the Seller are combined with goods the property of any person other than the Buyer or are

incorporated therein, the product thereof shall become or shall be deemed to be owned in common with that other person.

- 13.2 The property in any goods shall pass to the Buyer when, and shall not pass to the Buyer until, the Seller has been paid for them in full together with the full price due to the Seller for any other goods the subject of any other contract between the Seller and Buyer.
- 13.3 In the event of the Buyer becoming insolvent or having a receiver appointed of the whole or any part of its property or compounding with its creditors or going into liquidation or in the event of payment for any goods being overdue then and in any such event it shall be lawful for the Seller, its servants, officers or representatives to enter upon the Buyer's premises and recover possession of any goods of the Seller for which the Seller has not been paid and to take away such goods.
- 13.4 In the event of any goods being sold or otherwise disposed of by the Buyer before the Seller has been paid for them in full, then the entire proceeds of sale thereof and/or any other monies received by the Buyer or by a factor or by any other person (except a purchaser of goods in good faith without notice of this Condition 13) in connection with the sale, disposal or factoring of the goods or of invoices dealing with the goods (whether such monies are received by the Buyer's own customers or from factors or other third parties) shall be held in trust for the Seller and shall not be mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Seller's monies unless and until all monies referred to in Condition 13.2 have been fully paid. The Buyer shall give written notice of this Condition to any factor or other person except a purchaser of goods in good faith.
- 13.5 In the event of certain goods having been paid for by the Buyer and other goods not having been so paid for the onus of proof shall be on the Buyer to show that any goods remaining in its possession are goods for which it has paid.
- 13.6 This Condition 13 does not entitle the Buyer to return the goods or to refuse or delay payment on the grounds that the property has not yet passed nor shall it constitute an agency.
- 13.7 The Buyer appoints the Seller his agent with full authority to execute on his behalf any document or instrument which may be required in order to perfect the Seller's title and interest in the goods.
- ## 14 Sellers Remedies
- 14.1 In addition to the rights and remedies contained in the Conditions, the Seller shall have all the rights and remedies afforded to a Seller pursuant to any rule of law. All rights and remedies of the Seller under the Conditions shall be cumulative and not in the alternative.
- ## 15 Assignment
- 15.1 The contract and the rights granted under the Conditions shall not be assigned by the Buyer without the prior written consent of the Seller. Any assignment or purported assignment by the Buyer shall be wholly void and ineffective for all purposes unless made in conformity with this Condition.
- ## 16 Construction
- 16.1 The contract and the Conditions shall be governed by and construed according to English Law and the Courts of England and Wales shall have exclusive jurisdiction. The invalidity or unenforceability of any particular Condition or any other term of the contract shall not affect the other provisions and the contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- ## 17 Scope of the Conditions
- 17.1 No modification, variation or cancellation of any Condition shall be binding on the Seller unless the same shall be in writing and shall be signed by an executive officer of the Seller. The Conditions shall be binding upon and shall inure for the benefit of the parties and their respective successors and permitted assigns.
- ## 18 Copyright
- 18.1 Full copyright to any chosen design concept out of designs presented to you is the buyers only once payment has been received in full, however the seller retains the right to display the item/s in any online or offline portfolios, and for the purpose of marketing or advertising services on or offline. All work is carried out by the seller on the understanding that the buyer has agreed to our terms and conditions. If a choice of design is presented, only one solution is deemed to be given the seller as fulfilling the terms.
- ## 19.0 Production
- ### 19.1 Schedules and authorisation
- A final proof will be submitted for the buyers approval, the seller shall incur no liability for any errors not corrected by the proofs. Any mistakes will become the responsibility of the buyer. It is the buyer's responsibility to approve a content unless specific editing or content proofing has been purchased from the seller. The seller is not responsible for delays caused by failure to approve on time and will always charge for amendments and changes. These amendment charges are not included in any estimate prepared by the seller and are extra to any costs given. Over and above this any changes made by third parties are not the responsibility of the seller.
- ## 20. Intellectual property
- 20.1 By supplying text, images and other data to the seller Design inclusion in goods or services the buyer declares that it holds the copyright and/or trademark permissions to use such goods. Any artwork, images, or text supplied and/or designed by the seller on behalf of the buyer, will remain the property of the seller. By supplying images, text, or any other data to the seller, the customer grants seller permission to use this material freely in the relation to the goods that have been ordered. The customer agrees to fully indemnify and hold the seller free from harm in any and all claims resulting from the buyer not having obtained all the required copyright, and/or any other necessary permissions.