

# creative-cognition

## Standard terms and conditions of business

[06/06]

### 1 Interpretation

In these conditions the term 'the Company' means creative-cognition Ltd registered in England number 4863797.

'Buyer' shall mean the person, firm or company who accepts a quotation of the Company for the sale of goods or whose order for goods is accepted by the Company.

'Goods' means the goods and services (including any installment of the goods) which the Company is to supply in accordance with these conditions.

The acceptance of any tender, quotation or estimate or the placing of any order, requisition or indent for goods sold or supplied or for work to be done or to be procured by the Company is subject to the following conditions which are deemed to be incorporated therein.

Unless otherwise agreed in writing all offers are accepted and all goods sold subject to and upon these Terms of Business and which the Buyer shall be deemed to have adopted as the Buyer's standard terms of business in relation to all present and future dealings with the Company. The Company does not contract on buyer's terms and conditions and any acceptance or counter offer by the Buyer following an offer or quotation by the Company shall be deemed to have been made on the understanding that these Terms of Business shall apply. This understanding shall apply even if such acceptance or counter offer may have been expressed to be subject to any other terms.

The headings form no part of these Conditions of Sale and shall not affect their interpretation.

### 2 Price Variation

Estimates are based on the Company's current costs of production and, unless otherwise agreed, are subject to amendment on or at any time after acceptance but prior to delivery to meet any rise or fall in such costs.

All quotations and prices given by the Company to the Buyer are exclusive of any copyright/licences.

The Company may in its discretion acquire such software licences as may be necessary to facilitate the provision and development of the Goods and shall charge the cost thereof to the Buyer together with a commission of 15%.

### 3 Tax

The amount quoted to the Buyer or agreed between the Buyer and the Buyer in respect of the goods excludes VAT. At time of writing the company is not VAT registered. Invoices issued after the company becomes VAT registered will include a VAT element, which the Buyer shall be additionally liable to pay to the Company.

### 4 Copy and Content

A further charge may be made to cover any additional work involved where copy or material supplied is not clear and legible, or requires processing beyond that quoted, to convert it to a useable form.

### 5 Design, Other Preliminary Work and Copyright

All preliminary and additional work carried out at the Buyers request whether of a design or of experimental nature or otherwise and not specifically included in any quotation will be charged for at the rates specified by the Company from time to time.

Designs submitted by the Company remain the property and copyright of the Company unless otherwise agreed in writing.

"Know-how" for the purpose of this paragraph shall mean all patentable and non-patentable inventions, discoveries and improvements, processes and copyright works (including computer programs) and designs. Any intellectual property rights and Know-how jointly developed or funded for the purpose of this contract shall be owned by the parties as co-owners and each party shall be entitled to exploit any such intellectual property right or Know-how without reference to the other party and without any obligation to account to that other party for any of the profits of such exploitation. Nothing shall be so construed as to require either party to assign to the other any intellectual property rights or Know-how.

### 6 Indemnity

The Buyer undertakes that any material supplied by or on behalf of the Buyer to the Company for the purposes of the contract shall comply with all legal requirements of all relevant jurisdictions and in particular but without limitation shall not contain any matter whether by inclusion or omission which is defamatory, fraudulent, misleading or false nor shall any such material include any matter which infringes the copyright or any other intellectual property rights or other rights of any nature of any third party by implication or otherwise nor shall any such material contain the name or likeness of any living person or company or other entity unless their written approval has been obtained. The Buyer

agrees that it will hold the Company fully and effectively indemnified against all costs, claims, damages or other liability which the Company may suffer as a result of any material not complying with the above undertaking.

### 7 Delivery and Payment

Delivery of the goods shall be made by the Buyer collecting the goods at the Company's premises at any time after the Company has notified the Buyer that the goods are ready for collection or if some other place for delivery is agreed by the Company delivering the goods there.

The payment will be made by the Buyer to the Company in three instalments. The first payment of not less than 50% of the total price is payable upon commission of the goods. The second payment of not less than 30% of the total price is payable upon delivery of the agreed prototype of the goods to the Buyer. The final payment of not less than 20% of the total price shall become due upon notification by the Company that the goods are ready for delivery notwithstanding that delivery has not taken place and the property in the goods has not passed to the Buyer. Time of payment of the price shall be of the essence of the contract.

If the Buyer fails to make any payments within 30 days of the same becoming due then (without prejudice to any other right or remedy available to the Company) the Company may:

- cancel the contract or suspend any further deliveries and / or
- charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 8 per cent above Bank of England base rate calculated daily as per the Late Payment of Commercial Debts (Interest) Act 1998 and debt recovery costs until payment in full is received.

Any dates quoted for delivery are approximate and the Company shall not be liable for any delay in delivery. Time for delivery shall not be of the essence unless agreed by the company in writing. The goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

Where goods are not to be delivered by instalments, each delivery shall constitute a separate contract and failure by the company to deliver any one or more instalments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as repudiated.

If the Buyer fails to take delivery of the goods or fails to give the Company adequate delivery instructions at the time stated for delivery then (without prejudice to its other rights or remedies) the Company may:

- store the goods until actual delivery and charge the Buyer the reasonable costs thereof (including insurance) and
- sell the goods at the best price reasonably obtainable and after deduction of all reasonable storage and sale expenses charge the Buyer for any shortfall below the price payable by the Buyer.

### 8 Claims

Claims in respect of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to the Company and the carrier within three clear days of delivery (or in the case of non-delivery within 28 days of receipt of notice or despatch of the goods). All other claims must be made in writing to the Company within 10 days of delivery. The Company shall not be liable in respect of any other claim unless the aforementioned requirements have been complied with. The return of the goods will not be accepted unless the Company or its representatives shall first have had a reasonable opportunity of examining the same.

### 9 Liability

The Buyer agrees that the following terms, conditions and warranties otherwise not expressly stated herein and whether statutory or otherwise expressed or implied are deemed to be inconsistent herewith and are expressly excluded:

- As to the quality of the goods or any services
- As to the performance of the goods or services
- As to the fitness for any particular purpose of the goods or services.

Save and except as they impose liability on the Company for any death or personal injury resulting from the negligence of the Company, its servants or agents.

The Buyer further agrees that subject as aforesaid the Company shall not under any circumstances be liable in any way whatsoever whether in contract tort or otherwise for any of the following matters:

- The Company will not be liable to compensate the Buyer for any loss of anticipated profits, damage to the Buyer's reputation or goodwill, loss of expected future business, damages, costs or expenses payable by the Buyer to any third party, or any other

indirect or consequential losses.

- Any personal injury or damage to property whatsoever and howsoever arising

In lieu of any warranty or condition, statutory or otherwise expressed or implied as to the quality, performance or fitness for any particular purpose of the goods or services the Company agrees that if work is defective by reason of default of the Company to use reasonable skill and care, the Company shall at its sole discretion either rectify such defect at its own expense or refund the charge made by the Company for programming and cutting defective work. Under no circumstances whatsoever shall the Company be under any further liability of any kind.

### 10 Standing Materials

CD-ROM's, computer programs, packaging and other materials owned by the Company and used by it in the production of interactive media products including online work and the like remain its exclusive property. Such items when supplied by the Buyer shall remain the Buyer's property.

Metal plates and films owned by the Company, which are used for artwork, will be immediately destroyed after use unless written arrangements are made to the contrary. In the latter event, the cost of storage may be charged.

Disc space owned by the Company, which is used for artwork, and programming will be immediately erased after use unless written arrangements are made to the contrary. In the latter event, the cost of data retention may be charged.

### 11 Buyer's Property

Except in the case of a Buyer who is not contracting in the course of a business nor holding himself out as doing so, Buyer's property and all property supplied to the Company by or on behalf of the Buyer shall, while it is in the possession of the Company or in transit to or from the Buyer be deemed to be at the Buyer's risk unless otherwise agreed and the Buyer should insure accordingly.

The Company shall be entitled to make a reasonable charge for the storage of any of the Buyer's property left with the Company before receipt of the order or after notification to the Buyer of completion of work.

### 12 Materials Supplied By The Buyer

The Company may reject any materials supplied by the Buyer which appear to him to be unsuitable but the Company shall be under no liability to check the quality or suitability of the same. Additional costs incurred if materials are found to be unsuitable during production may be charged by the Company.

Where materials are so supplied or specified, the Company will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects, shortfall in compliance with specified requirements or unsuitability of materials so supplied or specified.

Quantities of materials supplied shall be adequate to cover normal spoilage.

Whilst every endeavour will be made to supply material in accordance with the quality of samples submitted or quoted for, this cannot be guaranteed.

### 13 Risk And Property

The risk of damage to or loss of the goods shall pass to the Buyer:

- In relation to goods to be delivered at the Company's premises at the time when the Company notifies the Buyer that the goods are ready for collection.

- In any other case at the time of delivery or if the Buyer wrongfully fails to take delivery at the time when the Company tenders delivery of the goods.

Notwithstanding delivery and the passing of the risk in the goods the property in the goods shall not pass to the Buyer unless payment is made in full for them and all other monies owed by the Buyer to the Company have been paid full and unconditionally.

Until such time as the property in the goods passes to the Buyer the Buyer shall hold the goods on a fiduciary basis as Bailee of the Company. In this capacity the Buyer is entitled to resell the goods in its ordinary course of business.

Until such time as the property in the goods passes from the Company to the Buyer the proceeds of sale or otherwise of the goods (whether tangible or intangible) including insurance proceeds shall be held in trust for the Company and kept separate from any monies or properties of the Buyer or 3rd parties (and in the case of tangible proceeds, properly stored, protected and insured).

The Buyer hereby assigns to the Company all rights and claims which the Buyer may have against its customers arising from such sales until payment is made in full of the price of the goods.

Until such time as they are resold or property in them passes to the Buyer the goods shall be kept separate from those of the Buyer and properly stored, protected, insured and identified as the Company's property.

Until such time as the property in the goods passes to the Buyer (and provided the goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Buyer to deliver up the goods to the Company and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the goods are stored and to repossess the goods.

The Buyer 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 Buyer does so, all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

### 14 Insolvency Of Buyer

This clause applies if:

- The Buyer makes any voluntary arrangement with its creditors or becomes subject to an Administration Order or (being an individual or firm) become bankrupt or (being a company) goes into liquidation or (otherwise other than for the purposes of amalgamation or reconstruction) or:

- an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer or

- the Buyer ceases or threatens to cease to carry on business or

- the Company reasonably apprehends that any of the above mentioned events is about to occur in relation to the Buyer and notifies the Buyer accordingly.

If this clause applies then without prejudice to any other right or remedy available to the Company it shall be entitled to cancel the contract or suspend any further deliveries without any liability to the Buyer 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.

### 15 Illegal Matter

The Company shall not be required to produce any master which in its opinion is or may be of illegal or libelous nature or an infringement of the proprietary or other rights of any third party, and which would otherwise involve any criminal or tortious liability of any kind.

The Company shall be fully indemnified by the Buyer in respect of any claims, costs and expenses arising out of any libelous matter or any infringement of copyright, patent, design, trade or service work or of any other proprietary or personal rights contained in any materials printed for the Buyer. The indemnity shall extend to any amounts paid in settlement of any claim.

### 16 Force Majeure

The Company shall be under no liability or deemed to be in breach if it shall be unable to carry out any provision of the contract for any reason beyond its reasonable control including (without limiting the foregoing) Act Of God, legislation, war, fire, flood, drought, failure of power supply, theft, loss of digital material files through equipment failure, lock-out, strike or other action taken by employees in contemplation of furtherance of a dispute or owing to inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Buyer may by written notice to the Company elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

### 17 Law

These conditions and all other express terms of the contract shall be governed and construed in accordance with the laws of England.

### 18 Confidentiality

"Confidential Information" shall mean all information disclosed by one party to the other provided that each such item of information would appear to a reasonable person to be confidential or is accompanied by a written statement that the same is confidential or proprietary.

The parties will take all proper steps to keep confidential all Confidential Information of the other disclosed to it pursuant to this agreement and will not divulge the same to any third party except to the extent that such information becomes public. The restrictions in this paragraph shall be valid for a period of five years from the date of delivery of the Goods.