

# Freshh! Creative Limited

## Terms and Conditions of Business

### TERMS OF BUSINESS

#### 1. General

The Customer's attention is drawn to these Terms of Business. All contractual agreements with Freshh! Creative Limited are subject to these Terms.

#### 2. Definitions

##### 2.1 In these Terms:

"Company" shall mean Freshh! Creative Limited (company number 527 4820) registered office Old Town Hall, Newburn, Newburn Road, Newcastle upon Tyne, NE15 8QR;

"Contract" means the contract for the sale and purchase of the Goods or the supply of Services;

"Customer" shall mean the person who accepts the Company's written estimate for the Goods or Services or whose written order for the Goods or Services is accepted by the Company;

"Goods" shall mean the goods (including any instalment of the goods or any which the Company is to supply in accordance with these Terms;

"Proprietary Material" shall mean all drawings, designs, plans, photographs, images, proofs, models, prototypes, specifications, estimates and other work (prepared or to be prepared by or on behalf of the Company under this Contract);

"Services" shall mean the services (including any part of the services) which the Company is to provide in accordance with these Terms;

"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Customer and the Company;

"Writing" and any similar expression, includes facsimile transmission and electronic mail or other forms of electronic communication.

#### 3. Basis of the Contract

**3.1** The Company shall sell (or provide as the case may be) and the Customer shall purchase the Goods or Services in accordance with the Company's Written estimate (if accepted by the Customer), or the Customer's Written order (if accepted by the Company), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such estimate is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

**3.2** The Company reserves the right to withdraw any estimate issued prior to acceptance without notice or reason being given and at the Company's sole discretion.

**3.3** No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Company.

**3.4** The Company's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Company in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

**3.5** Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted on entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

**3.6** Any typographical, clerical or other error or omission in any sales literature, estimate, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

#### 4. Orders and Specifications

**4.1** No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.

**4.2** The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

**4.3** The quantity, quality and description of the Goods or Services and any specification for them shall be as set out in the Company's estimate (if accepted by the Customer) or the Customer's order (if accepted by the Company).

**4.4** If the Goods are to be produced or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.

**4.5** The Company reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable statutory or E.U. requirements or, where the Goods or Services are to be supplied to the Company's specification, which do not materially affect their quality or performance.

**4.6** No order which has been accepted by the Company may be cancelled by the Customer except with the

agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

## **5. Price**

**5.1** The price of the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price will correspond to the Company's hourly rate card current at the date of the Contract. The price of the Services shall be calculated by reference to the time spent in carrying out the Services at the rates set out in any estimate, or where no rates have been quoted (or an estimate is no longer valid) at the rates set out in the Company's hourly rate card current at the date of the Contract. All prices quoted are valid for 28 days only or until earlier acceptance by the Customer, after which time they may be altered by the Company without giving notice to the Customer.

**5.2** The Company reserves the right, by giving Written notice to the Customer at any time before delivery of the Goods or completion of the Services, to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

**5.3** Except as otherwise stated in the Company's Written estimate and unless otherwise agreed in Writing between the Customer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.

**5.4** The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

## **6. Payment**

**6.1** The Customer will pay the price in consideration for the supply of the Goods and/or the Services by the Company.

**6.2** Unless otherwise agreed in Writing by a Director of the Company at commencement of the contract payment for the Goods and/or Services shall be due 28 days from the date of invoice.

**6.3** In the event of any late payment whatsoever the Company may (at the company's sole discretion) charge interest on any balance due at the rate of 8% over Bank of England base rate at the time when interest becomes payable calculated from the date the payment falls due until the date of payment in full as set out by the 'Late Payment of Commercial Debts (Interest) Act 1998.

**6.4** If required by the Company, a non-refundable deposit of 25% or such other figure as may be required by the Company shall be paid by the Customer to the Company on placing an order for any Goods or Services.

**6.5** In the case where there is to be a delivery of Goods, invoices shall be raised by the company upon delivery. In the event of piecemeal delivery, then the Company may (at the Company's sole discretion) raise separate invoices as and when each separate delivery is affected.

**6.6** In the case where there is to be a provision of Services only by the Company to the Customer, invoices shall be raised on an interim basis at monthly intervals or whenever it is appropriate to do so.

**6.7** The Customer shall reimburse the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

## **7. Delivery of the Goods/ Performance of the Services**

**7.1** The Company shall use its best endeavours to carry out the Services within the time notified by the Company to the Customer but time shall not be of the essence at any stage. The Company shall not incur any liability whatsoever for failure to supply or complete the Services by any given date or within any given time scale.

**7.2** Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.

**7.3** Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Customer.

**7.4** Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

**7.5** If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

**7.5.1** store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

**7.5.2** sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

**7.6** If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without limiting any other right or remedy available to the Company, the Company may:

## **8. Risk**

**8.1** The risk in the Goods shall pass to the Customer immediately upon delivery and the Customer shall from that time be wholly responsible for the same. The Customer shall take out and ensure that all appropriate insurance is in place.

#### **9. Retention of Title**

**9.1** Notwithstanding clause 8 above, the Company shall retain title and ownership in the Goods until such time as the price and all other sums outstanding and owing by the Customer to the Company are paid in full.

**9.2** Pending payment in full, the following sub-clauses shall apply.

**9.2.1** The Customer shall store the Goods separately and in such a way as they can be readily identified as belonging to and being the Goods of the Company.

**9.2.2** The Customer shall at the Customer's own expense immediately return the Goods to the Company should the Company or its authorised representatives so request at any time after payment is due.

**9.2.3** In the event that the Goods shall be in any way mixed, compounded, or entwined with the property of a third party or parties then the product or products thereof shall be deemed to be held in common with such third party or parties.

**9.2.4** Without prejudice to clause 9.2.3 above, the Customer shall hold the Goods as the Company's trustee and bailee and shall keep the Goods separate, properly stored, protected, insured, labelled, and identified as being the Company's property.

**9.2.5** The Customer shall not sell, give away, or otherwise dispose of the Goods. In the event that the Customer shall do so (which for the avoidance of doubt is strictly forbidden until the price and all sums outstanding have been paid to the Company) then any monies received and the proceeds of sale, or disposal, including any cheque received or other payment shall be held on trust by the Customer for the Company and the Customer will forward the cheque or payment to the Company immediately. Pending the same, the Customer shall keep any monies received in a separate account so as to be identifiable as the Company's monies. In particular, but without prejudice to the foregoing, the Customer shall not pay the proceeds into any bank account which is overdrawn.

**9.2.6** The Company shall be entitled at any time following the date upon which payment is due and without additional notice to enter the premises of the Customer or any third party where the Goods are situated or shall be stored and repossess the same accordingly. For the avoidance of doubt, the Customer irrevocably consents to allow the Company access onto the Customer's premises for this purpose. The Customer shall reimburse the Company for all reasonable expenses and fees incurred (including, but not limited to, legal expenses) in so doing.

**9.2.7** The Company shall be entitled to maintain an action for the price of Goods notwithstanding that title to the same shall not have passed to the Customer.

**9.2.8** The Customer will immediately notify the company of any damage to the Goods and will hold any insurance monies received in trust for the Company absolutely. In the event that a claim is to be made under the Customer's insurance, the Company may, at the Company's sole discretion, conduct negotiations and effect a settlement with the insurers in place of the Customer. The Customer at all times irrevocably authorises the Company to collect any insurance monies from the insurers. The Company may apply any insurance monies as the Company shall see fit.

#### **10. Warranties and Liability**

**10.1** Subject as expressly provided in these Terms, and except where the Customer is a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**10.2** Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

**10.3** A claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within seven days 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 delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

**10.4** Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Terms, the Company may replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability to the Customer.

**10.5** Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under

The Consumer Protection Act 1987, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or Services (including any delay in supplying or any failure to supply the Goods or Services in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods or Services except as expressly provided in these Terms.

**10.6** The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the

following shall be regarded as causes beyond the Company's reasonable control:

**10.6.1** act of God, explosion, flood, tempest, fire or accident;

**10.6.2** war or threat of war, sabotage, insurrection, civil disturbance or requisition;

**10.6.3** acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

**10.6.4** import or export regulations or embargoes;

**10.6.5** strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

**10.6.6** difficulties in obtaining raw materials, labour, fuel, parts or machinery;

**10.6.7** power failure or breakdown in machinery.

### **11. Confidentiality**

**11.1** The Customer shall keep confidential and shall not without the prior written consent of the Company disclose to any third party or parties the contents of any documents or information (whether or not of a commercial or a technical nature) required from the Company as part of or in connection with a estimate. The Customer shall use the same solely for the purpose of evaluating the estimate.

### **12. Intellectual Property Rights**

**12.1** The Company shall have and shall retain the property, copyright, and all other intellectual or other industrial property rights in the Proprietary Material.

**12.2** The Customer shall not disclose the Proprietary Material to any third party without the Company's Written consent and the Customer shall indemnify the Company against all loss (in particular but not limited to loss of profit) caused to the Company by any wrongful disclosure of the Proprietary Material.

### **13. Indemnity**

**13.1** If a claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Customer, the Company shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:

**13.1.1** the Company is given full control of any proceedings or negotiations in connection with the claim;

**13.1.2** the Customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;

**13.1.3** except pursuant of a final award, the Customer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);

**13.1.4** the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);

**13.1.5** the Company shall be entitled to the benefit of, and the Customer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Customer which are payable by, or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

**13.1.6** without limiting any duty of the Customer at common law, the Company may require the Customer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Customer under this clause.

### **14. Insolvency of Customer**

**14.1** This clause 14 applies if:

**14.1.1** the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

**14.1.2** an encumbrancer takes possession, or a receiver is appointed, of the property or assets of the Customer; or

**14.1.3** the Customer ceases, or threatens to cease, to carry on business; or

**14.1.4** the Seller reasonable apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

**14.2** If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, 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. Cancellation by Customer**

**15.1** The Customer may not cancel this Contract unless the Company agrees it in writing and then only upon the terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), cost (including the cost of all labour, material and services used), claims, actions, damages, charges and expenses incurred by the Company as a direct result of the cancellation including all and any consequential loss suffered by the Company.

### **16. Miscellaneous**

**16.1** No waiver by the Company of any breach of contract by the Customer shall be construed as a waiver of any subsequent breach of the same or any other provision.

**16.2** If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part then the validity of the other provisions of the Contract and the remainder of the provision in question shall not be effected.

**16.3** For the avoidance of doubt nothing in this agreement shall confer on any third party any benefit or the right to

enforce any term or terms of this agreement.

**16.4** The Company may at the Company's sole discretion subcontract the performance of this Contract in whole or in part.

**16.5** The Contract shall not be assignable by the Customer without express written consent of the Company.

**16.6** The Company shall have a lien on all the Customer's property in the Company's possession (howsoever arising) for all sums due at any time from the Customer and shall be entitled to use, sell, or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such sum (including sale costs) upon providing 28 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sums due to the Company and the cost of sale and disposal, the company shall be discharged of any liability in respect of the Customer's property.

**16.7** Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

**16.8** Nothing in this agreement shall be deemed to imply, infer, nor create any form of partnership between the parties hereto and/or prevent or prohibit or in any way restrict the Company dealing with any other third parties or entering into any similar or other form of agreement with any third party.

**16.9** This contract shall be governed by and construed in accordance with the Law of England and Wales and the parties shall submit to the jurisdiction of the English Courts in their entirety.

For and on behalf of Freshh! Creative Limited

Signed.....

Position in company.....

Date.....

For and on behalf of :

Signed.....

Position in company.....

Date.....