

## 1. General

In these conditions:

- a) "The Buyer" means the person, firm or company who purchases product from one of our websites or accepts a quotation of the Seller for sale of goods or whose order for the goods is accepted by the Seller.
- b) "The Seller" means Toucan eMedia, a trading division of Toucan Internet LLP of PO Box 5206, Takeley, Bishop's Stortford, Herts, CM22 6RU UK and any wholly owned subsidiary company.
- c) "The Goods" means the goods and/or materials which the Seller is to supply and which are the subject of the contract between the Seller and the Buyer.
- d) The contract between the Seller and the Buyer shall be subject to these terms and conditions which govern the said contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer.
- e) The contract between the Seller and the Buyer does not affect the Buyers statutory rights.
- f) No variation of these Terms and Conditions shall be binding unless agreed in writing by a Designated Member of the Seller.
- g) Any typographical, clerical or other error or omission in any sales literature, quotation, list price, acceptance of offer, invoice, web page, download or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- h) The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.
- i) 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 shall not be affected thereby.

## 2. Quotation and Price

- a) Unless previously withdrawn by the Seller, quotations and tenders are open for acceptance for the period stated therein or if no period shall be stated therein within one month from the date thereof.
- b) All prices specified in quotations, tenders and on our website are subject to variation by the Seller without prior notice after the date specified in the document to the Buyer if applicable.
- c) Quotations and tenders are subject to confirmation by the Seller upon receipt of orders from the Buyer.
- d) All prices quoted or accepted are exclusive of VAT and in the contract price shall be such quoted or accepted price plus VAT at the appropriate rate.
- e) All prices, unless otherwise stated, are exclusive of all transport, storage, parking, insurance, forwarding and other costs, which shall be added to the Buyer's account.
- f) Subsequent to the date of any quotation or tender any increase in the cost of fulfilling the contract to the Seller for any reason whatsoever prior to the date of delivery shall be added to the Buyer's account.

### 3. Terms of Payment

- a) Cheque or Bank transfer for Replication or Duplication - 100% or by Credit Card with handling fee with purchase order. Credit card, Debit card, Cheque or Bank transfer for blank CDR materials - 100% with purchase order.
- b) In the case of contracts involving more than one delivery, default in payment by the due date shall entitle the Seller at its option to treat the contract and any other contract between the Buyer and the Seller as repudiated by the Buyer and to claim damages.
- c) Interest at the rate of 4% per annum over the base rate for the time being of Barclays Bank plc shall be charged on overdue payments and payment of interest shall not prejudice the Seller's rights under any contract.

### 4. Delivery

- a) Time shall not be of the essence for the purpose of delivery of goods by the Seller unless stated as part of the contractual agreement between both parties. Delivery terms are quoted without guarantee or penalty and the time for delivery shall run from the date the order is received or the tender or quotation accepted or the date on which sufficient information is received from the Buyer to enable the Seller to proceed with the execution thereof, whichever is the later.
- b) Subject to the provisions of paragraph (a) above
  - I. Where contracts provide for a single delivery without specifying dates, goods shall be delivered and accepted as soon as available for delivery.
  - II. Where contracts provide for deferred delivery without specifying date or dates for such deferred deliveries, delivery shall be made and accepted within six months of the specified first delivery date.
  - III. In the event of failure by the Buyer to accept any delivery, that delivery shall be deemed to have occurred and any storage or other costs incurred by the Seller as a result of the Buyer's failure shall be added to the Buyer's account
  - IV. Where any subsequent deviation is made from these terms at the request of the Buyer, any additional costs incurred by the Seller as a result thereof shall be added to the Buyer's account with interest as aforesaid.
  - V. Every effort shall be made by the Seller to affect delivery in accordance with these terms and conditions but the Seller will not be liable for any loss or damage arising due to delay on delivery however caused.
  - VI. Each delivery shall constitute a separate contract which shall be subject to these terms and conditions and any failure or defect in any one delivery shall not entitle the Buyer to repudiate the contract as to the remaining deliveries.

#### 4.1 Quantity Deviation (CD & DVD Replication only)

The Seller reserves the right to supply up to 5% +/- on any one title. Maximum deviation 1000 units. All overs will be charged at the agreed "Buyers" purchase price.

## 5. Claims

The Buyer shall inspect the goods forthwith upon delivery or deemed delivery as specified in clause 4b(iii) and shall within three days of such delivery (and time shall be of the essence) notify the Seller of any matter or thing by reason whereof the Buyer alleges that the goods are not in accordance with the contract. The return of any goods will not be accepted unless the Seller or its authorised representative shall first have had the opportunity of considering the Buyer's reason(s) for returning the goods and to accept the return thereof. If the Buyer shall fail to give notice as aforesaid, the goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be deemed to have accepted the goods.

### 5.1 Returns Policy & Procedure

- a) Upon receipt of goods, any damages or discrepancies noticed MUST be reported immediately to 01279 871694. Claims must be made within THREE working days of delivery of goods ordered, (and time shall be of the essence).
- b) Damaged goods and discrepancy claims will be processed within 5 working days of notification, (sooner if possible). If it is necessary to return goods, please ensure that the Seller has been made aware of this return.
- c) In the event that the Buyer mistakenly orders the wrong product, the Seller will refund the cost of the goods (less the initial delivery charge) once the goods have been received back in a resalable condition. The cost of the return will be borne by the Buyer and will not be refunded.
- d) All goods returned MUST be in original condition (i.e. not damaged or used) or the refund and/or replacement will not take place. All goods returned must be repacked to the same standard of protection as when received, and must be returned within 14 days.
- e) All returns must be sent back to the Seller by registered post or by other means which require a signature of receipt for confirmation of safe arrival.
- f) This does not affect the Buyers statutory rights.

## 6. Limitation of Seller's Liability

Any express or implied statement, condition or warranty, statutory or otherwise, not stated herein is hereby excluded and deemed to be inconsistent herewith, and no responsibility is accepted by the Seller for any damage or loss arising directly or indirectly out of goods supplied or for any damage or loss arising by reason of any failure of goods to comply with the specification or with statutory requirements whether attributable to Seller's negligence or otherwise save to the extent that exclusion of liability is prohibited by law.

- (a) Subject to paragraph 5 and 6 the Seller's liability for any loss and/or damage whether direct or indirect, consequential or howsoever caused shall be limited, at the Seller's discretion to:
  - I. Replacement or repair of goods supplied OR
  - II. Return of the purchase price and/or the price paid for services, less one twelfth part of such price for each calendar month that has elapsed since delivery OR
  - III. The re-supply of the services.

## 7. Buyers Property

Any property of the Buyer supplied to the Seller for the purposes of the contract will be held at the Buyer's risk. Every care will be taken to secure the best results where materials are supplied by the Buyer but no responsibility will be accepted for imperfect work caused by any defects or the unsuitability of materials so supplied.

## 8. Force Majeure

The Seller shall not be liable to the Buyer or deemed to be in breach of contract by reason of any delay in performing or failing to perform any of the Seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the Seller's control. Without prejudice to the generality of the foregoing, any act of God, war, strikes, flood, lockouts, fire, tempest, or the inability of the Seller to procure materials or articles required for the performance of the contract which may prevent the fulfillment thereof shall be regarded as causes beyond the Seller's reasonable control. In the event of any failure or delay to perform any contract as a result of the said causes, such contracts, at the Seller's discretion, may be varied or cancelled by the Seller or delivery may be wholly or partly suspended and time for delivery may be extended by the Seller without the Seller being liable to the Buyer or being deemed to be in breach of contract.

## 9. Property in Goods

- a) Risk of damage to or loss of the goods shall pass to the Buyer:
  - I. In the case of goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the goods are available for collection: or
  - II. In the case of goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the goods, the time when the Seller has tendered the delivery of the goods.
- b) Notwithstanding delivery and the passing of risk in the goods, or any other provisions of these conditions, the property in the goods or any part of them shall not pass to the Buyer until the Seller has received in cash (credit card/debit card or cleared funds) payment of the full price of the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- c) Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Seller's fiduciary agent or bailee, and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time they Buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the goods whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds properly stored, protected and insured.
- d) 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 Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller 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 repossess the goods.

- e) 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 Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall ( without prejudice to any other right or remedy by the Seller) forthwith become due and payable.

## 10. Limits of Contract

Quotations or tenders include only such goods and work as are specified therein. Each order shall be deemed to be a separate contract to which these terms and conditions shall apply (and no liability can be accepted by the Seller for the working in combination of goods, which have been ordered in separate parts and/or at different times.

## 11. Design

- a) The Buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyers specification which involves the infringement of any letters, patents or registered design.
- b) The Seller gives no warranty or representation that the goods do not infringe any letters, patents, trademarks, registered designs or other industrial rights.
- c) Artwork Design - All jobs must conform to Toucan eMedia graphics specifications and template layout. Any correction work that is authorised by the Buyer will be charged at Toucan eMedia's standard hourly + vat.

## 12. Copyright

- a) The Buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyers specification which involves the infringement of any letters, patents or registered design on the data disc.
- b) Before any replication or duplication can commence the Buyer must complete the Toucan eMedia "Customer Copyright Certification &/or Licensing Rights & Indemnification" form. This form does not need to be completed if a MCPS document granting the rights to manufacture is supplied to Toucan eMedia.
- c) The default text for the specification ring on a replicated CD or DVD will read "www.ebusiness-cards.co.uk". This text will be printed on all CD & DVD product unless otherwise instructed by the Buyer.

## 13. Waiver

No concession or indulgences granted to the Buyer shall prejudice future exercise of the Seller's full right hereunder.

## 14. Alterations

Alterations to any orders accepted by the Seller cannot be accepted without the Seller's consent in writing and any additional costs involved will be chargeable to the Buyer.

## 15. Cancellations

No order accepted by the Seller can be cancelled without the Seller's consent in writing (or e-mail correspondence) and under no circumstances can the Seller allow cancellation of orders for goods made or specially adapted to the Buyers' requirements.

## 16. Assignments

The contract, of which the conditions form part, is personal to the Buyer who shall not assign the benefit thereof without the Seller's written consent.

## 17. Legal Construction

Any contract entered into between the Seller and the Buyer shall in all respects be construed and operate as an English Contract subject to the Laws of England.