

# Trading Terms and Conditions of Disc Wizards

## 1. GENERAL

These terms and conditions shall apply to all contracts entered into by the Company (as hereinafter defined) and unless otherwise agreed by the Company in writing shall apply to all orders placed with the Company. Any stipulation or conditions contained in the orders placed by the Customer (as hereinafter defined) which conflict with any of the terms and conditions hereinafter contained or in any way qualify or negate the same shall be deemed to be inapplicable to any order placed with the Company unless expressly agreed to by the Company in writing when acknowledging the order in question.

## 2. DEFINITIONS

The following capitalized terms used in these Terms and Conditions have the following meanings;

- (1) The "**Company**" shall mean Disc Wizards and shall include any trading division operating from time to time, any subsidiary (as defined in the Companies Act 1985) or associated company of the Company and shall also include all its successors in title and assigns;
- (2) The "**Contract**" shall mean any order placed by the Customer and accepted by the Company, which order shall be deemed to include these Trading Terms and Conditions;
- (3) The "**Customer**" shall mean the person, firm, company or other body by whom an order for the Goods or Services is given to the Company and shall include the Customer's successors in title and permitted assigns;
- (4) The "**Customer's Materials**" shall mean all goods or other matter or things whatsoever supplied by or on behalf of the Customer to the Company;
- (5) The "**Goods**" shall mean any goods or thing produced by the Company for the Customer under the Contract;
- (6) The "**Services**" shall mean any services carried out by or on behalf of the Company under the Contract by any process of Whatsoever nature; and
- (7) "**Trading Terms and Conditions**" shall mean these terms and conditions.

## 3. CONDITIONS

The Contract is subject to the following conditions:

- (1) That the Customer enters into the Contract as principal and not as agent for any other person firm company or any other body;
- (2) That the copyright in the Customer's Materials is vested in the Customer and the supply of Goods or Services shall not give rise to any breach of copyright or other intellectual property right; and

(3) That the Customer's Materials are free from and do not contain any defamatory, actionable, illegal or criminal matter.

#### **4. INDEMNITY**

The Customer agrees and undertakes to indemnify and to keep indemnified the Company against any loss, damage, costs or expenses of any kind whatsoever which may occur be suffered or incurred as a result of a breach of failure to comply with any of the conditions contained in section 3 above and/or any action, claim or demand relating to the Customers Materials howsoever arising.

#### **5. ORDERS**

(1) All orders addressed to the Company by the Customer for Goods or Services are subject to the Company's acceptance at the Company's then prevailing rates or prices.

(2) All orders addressed to the Company by the Customer for Goods or Services will be processed, and manufacturing started immediately on receipt, unless prior arrangements have been agreed between the Customer and the Company.

(3) Any time or date for delivery of the Goods or completion of the Services is given in good faith, but is an estimate only. If no dates are specified, delivery will be within a reasonable time, and time shall not be of the essence of the Contract.

#### **6. CANCELLATION**

(1) In the event of an order being cancelled by the Customer after the order has been accepted by the Company the Company shall be entitled without prejudice to any rights of action it may enjoy in respect of such cancellation to make a cancellation charge payable by the Customer to cover the Company's loss arising from such cancellation.

(2) If in the sole discretion of the Company the Customer's Materials are not of the necessary technical standard to enable the Services performed or are otherwise objectionable or potentially objectionable on the grounds set out under section 3(2) or section 3(3) above, the Company may cancel the order and make a charge payable by the Customer to cover any expenses or costs incurred by the Company arising from such cancellation including the Company's expenses in determining that the Customers Materials are not of the necessary technical standard.

#### **7. RATES**

(1) Rates published in the Company's rate card current at the date of the Customer's order are fully inclusive of all manufacture costs and Value Added Tax will be charged additionally.

(2) Rate cards, catalogues, leaflets, web sites and other literature issued by the Company are intended merely to be an indication of

the matters therein referred to and not to constitute any part of the Contract or a representation.

(3) The prices quoted in the rate card are based on costs current at the date of issue thereof. The prices quoted are valid for a period of 28 days. The Company reserves the right to alter the price without notice to cover variations in cost prior to completion of the Services or delivery of the Goods and the price payable by the Customer shall be that existing at the date of the completion of the Services or delivery of the Goods.

(4) Any of the Customer's Materials that require preparation before use will be subject to an additional charge covering the time and labour involved.

## **8. PAYMENT**

(1) Payment shall be made in full before despatch of the completed order, unless prior payment arrangements have been agreed and accepted by the Company.

(2) If a Customer fails to take delivery of the Goods within 21 days of notification of completion, the Company may thenceforth charge a reasonable sum for storage without prejudice to any other claims of the Company.

(3) Where any sum or sums remain due to the Company for a period in excess of 21 days from the due date then the Company may charge interest at the rate of 20% per annum on such sum or sums interest running before as well after any judgment obtained against Customer Interest shall be calculated and accrued monthly on the outstanding balance (including accrued and unpaid interest).

(4) Without prejudice to any other remedy of the Company hereunder in the event of the Customer for any reason whatsoever failing to make due and proper payment of any sum or sums which become payable by the Customer in accordance with the provisions of these Trading Terms and Conditions the Company shall have the right to detain and keep in its possession and control any and all of the Customer's Materials in its possession under this Contract or any other Contract until such time as all outstanding sums (including interest if any thereon) under this Contract or any other Contract have been paid In full by the Customer.

## **9. DELIVERY AND ACCEPTANCE**

(1) Delivery and collection of the Customer's Materials and any goods supplied by the Company shall be the Customer's responsibility. If the Company agrees to arrange packing and transport it will do so as the Customer's Agent and the Customer shall reimburse the Company the costs of transport and packaging, Customs Duty and other costs including a service charge at the Company's reasonable discretion. The Customer is deemed to have accepted the Goods on delivery to the Customer or to the agent

responsible for transportation to the Customer.

(2) If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company the Customer shall not be entitled to object or reject the Goods or any of them by reasons of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

## **10. RISK AND PASSING OF PROPERTY**

(1) Risk of damage to or loss of the Goods shall pass to the Customer:

\* In the case of the Goods to be delivered at the Company's premises, at the time of when the Company notifies the Customer that the Goods are available for collection; or

\* In the case of the Goods to be delivered otherwise than at the Company's premises and/or after packaging by the Company, at the moment the Goods are ready for such packaging or the Goods leave the premises of the Company (whichever is earlier),

(2) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the Title to the Goods comprised in each Contract shall not pass to the Customer until full payment with cleared funds of all monies due from the Customer to the Company under all Contracts between the Company and the Customer has been made, but, even though title has not passed, the Company shall be entitled to sue for the price of any Goods once payment has become due.

(3) Until such time as title in the Goods has passed to the Customer:

(a) the Company shall have absolute authority to retake, sell or otherwise deal with or dispose of all any or part of the Goods in which title remains vested In the Company;

(b) for the purpose specified in section 10(3)(a) above the Company or any of its agents or authorised representatives shall be entitled on reasonable notice during normal working hours to enter upon any premises in which the Goods or any part thereof is installed, stored or kept, or is reasonably believed so to be;

(c) the Customer, as the Company's fiduciary agent and bailee, shall store and maintain the Goods in a good and stable condition (at no cost to the Company) keep the Goods separate from those of the Customer and any third party or otherwise denote the Goods in respect of which property remains vested with the Company in such a way that the same can be recognized as the property of the Company;

(d) the Customer shall insure and maintain comprehensive insurance of the Goods to the full replacement value thereof against all risks.

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

#### **11. LIMITATIONS ON THE COMPANY'S LIABILITY**

(1) The Company accepts no liability in respect of the Services, Goods and the Customer's Materials except as is provided for in section 11 and section 12 hereof.

(2) Subject to section 12, notwithstanding anything contained in these Trading Terms and Conditions (other than section 12) or the Contract in no circumstances shall the Company be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof,

\* for any loss of profit, business, contracts, revenues or anticipated savings, or

\* for any special, indirect or consequential damages of any nature whatsoever.

(3) (a) If the Customer has a complaint alleging any defect in the Services or Goods supplied by the Company, the Customer must inform the Company in writing of such complaint within 21 days of delivery to the Customer or its agent (b) No claim will be accepted if attributable to any of the following:

\* defects in the Customer's Materials; (to include, but not limited to, defective supplied masters and incorrect artwork files);

\* normal loss of quality attributable to any transfer process;

\* damage in transit; or

\* misuse by the Customer

(c) If such complaint is accepted then the Company shall, at its option, provide the Services again and/or replace defective parts free of charge to the Customer but otherwise on the same conditions as the original Contract, or reimburse the Customer the amount paid to the Company under the Contract for the Services or Goods.

(d) In the case of electronic proofs supplied by the Company to the Customer prior to printing, the intention is to make the Customer aware of what will be printed. The electronic proof is not specific for colour.

#### **12. UNFAIR CONTRACT TERMS ACT**

(1) If and to the extent that section 6 and/or 7(3A) of the Unfair Contract Terms Act 1977 applies to the Contract, no provision of these Trading Terms and Conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Company for breach of the applicable warranties as to title and quiet possession implied into the terms and conditions of the Contract by section 12(3) of the Sale of Goods Act 1979, or section 2(3) of the

Supply of Goods and Services Act 1982, whichever Act applies to the Contract.

(2) Where the Customer is a natural person and if and to the extent that section 2(1) of the Unfair Contracts Terms Act 1977 applies to the Contract, nothing in these Trading Terms and Conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Company for the death or personal injury caused to the Customer by reason of the negligence of the company or of its servants, employees or agents.

### **13. TERMINATION**

If the Customer becomes insolvent or in the opinion of the Company is likely to go into bankruptcy, receivership or liquidation, or make default in or commits a breach in the Contract, the Company may forthwith on written notice, to the Customer terminate the Contract without incurring liability to the Customer and without prejudice to the Company's rights which may have accrued up to the date of termination.

### **14. ENGLISH LAW**

The laws of England shall apply to the Contract, and the Company and the Customer hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

### **15. ASSIGNMENT**

The Contract is not assignable by the Customer without the written consent of the Company, but the Company may without consent assign or sub-contract or any of its rights and obligations hereunder.

### **16. FORCE MAJEURE**

The Company shall be under no liability for any delays or failure to perform the Contract in the event that such delay or failure to perform arises from or is caused by and actual circumstances beyond the Company's reasonable control including (but not limited to) acts of nature, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to obtain materials required for the performance of the Contract.

### **17. NOTICES**

(1) Any notice shall be made in writing and either delivered or posted in a first-class prepaid envelope to the Customer's or Company's address as shown respectively on the order and the acceptance of order or failing those to the facsimile number or

address at which the Company reasonably believes the Customer to be residing or carrying business.

(2) Notices and notifications to the Customer shall be made either orally to the Customer or its Agents or employees, by email to an email address notified to the Company, or by delivery of first class pre-paid post or air mail as the case may be to the Customer's address as notified to the Company.

(3) Any notice given orally or delivered shall be deemed effective immediately, any Notice sent by email shall be deemed delivered on the next business day and any Notice served by post shall be deemed effective when such Notice would have been received in the normal course of the post.

### **18. WAIVER**

(1) Any indulgence granted by the Company to the Customer and any failure by the Company to insist on strict performance of these Trading Terms and Conditions or any Contract shall not be deemed a waiver of any of the Company's right to remedies nor be a waiver of any subsequent default by the Customer.

(2) The contents of these Trading Terms and Conditions are subject to update, as and where necessary deemed by the Company.

(3) The invalidity in whole or in part of any section in these Trading Terms and Conditions, whether under the Unfair Terms in Consumer Contracts Regulations 1999 or otherwise, shall not affect the validity of the remainder of such section or these Trading Terms and Conditions.