

PINK CHALK LTD
STANDARD TERMS AND CONDITIONS OF BUSINESS FOR SALE OF GOODS AND
SERVICES

1. DEFINITIONS

1.1 In these Conditions the following expressions shall have the following meanings:

“**the Company**” means Pink Chalk Ltd

“**the Customer**” means the person firm or corporation with whom the Company contracts for the sale of the Goods and /or provision of the Services

“**the Goods**” means the products including software which are to be sold by the Company and purchased by the Customer pursuant to the Contract

“**the Contract**” means the contract for the sale of the Goods and/

or the provision of Services by the Company to the Customer incorporating these Conditions arising from the Company's acceptance of the Customer's order

“**the Services**” means any service provided by the Company whether in relation to the supply of Goods or otherwise and where the Contract is for work and materials or work includes the supply of labour

“**working day**” means Monday to Friday except a day which is a Bank public or statutory holiday

2. General

2.1 Any quotation or estimate given by the Company is an invitation to the Customer to place an order and thereby make an offer open to acceptance by the Company and no order placed in response to or any other acceptance of a quotation or estimate shall give rise to a contract binding upon the Company. A binding contract shall come into effect upon the earliest of any of the following namely:

- (a) any commencement of the supply of the Goods or provision of Services by the Company;
- (b) despatch of the Goods; or
- (c) receipt of the Company's written acceptance of order; or
- (d) the Customer and the Company entering into a service agreement

2.2 These Conditions are the only conditions upon which the Company transacts business and shall be incorporated in the Contract to the exclusion of all other terms and conditions including any terms or conditions specified or referred to in any order placed by the Customer. Any reference in any document forming part of or evidencing the Contract (including any order design drawing specification or other similar document) to any terms or conditions or purchase or business of the Customer shall not have the effect of incorporating any such term or conditions in the Contract

2.3 No variation of these Conditions shall have effect unless it is agreed to by the Company in a document signed by a director of the Company and issued to the Customer

- 2.4 In addition to these Conditions the Company may from time to time specify terms of trading regarding such matters as without limitation carriage minimum order sizes and packaging; details of such terms of trading are available upon request from the Company and are hereby incorporated into these Conditions
- 2.5 The Customer is advised that the Goods may be subject to export regulations. Accordingly, the Customer warrants that none of the Goods will be exported from the United Kingdom unless prior written approval has been obtained from all appropriate regulatory authorities at the Customer's own expense. The Customer shall indemnify the Company in respect of all loss damages costs and expenses howsoever incurred if the Customer fails to obtain such prior written approval
- 2.6 The Customer will be responsible for and reimburse the Company for any costs it incurs in complying with the Waste and Electrical and Electronic Equipment Regulations 2006 in respect of any equipment of the Customer that the Company is required to collect recycle or dispose of

3 Prices

- 3.1 All prices are exclusive of Value Added Tax which will be charged at the rate applicable at the relevant tax point together with any other applicable duty or tax imposed by any competent authority
- 3.2 Prices stated in quotations estimates acceptances of orders or other documents issued by the Company prior to despatch of the Goods or the provision of Services are not binding upon the Company and the price charged shall be the price ruling at the date of despatch of the Goods or provision of Services unless the price so stated was also stated to be fixed and the Customer has complied in all respects with the terms and conditions specified by the Company subject to which the price was stated to be fixed
- 3.3 Save where expressly otherwise agreed in writing the price of the Goods despatched to a destination in the United Kingdom shall exclude carriage to that destination

4 Delivery and Passing of Risk

- 4.1 The Customer accepts that the Company is dependent upon the manufacture and supply of Goods by third party suppliers and therefore all times or dates given for delivery of the Goods and for performance of the Services are intended to be estimates only and shall not be made the essence of any contract.
- 4.2 Delivery of the Goods shall be made to the Customer at the place specified in the Contract or as subsequently agreed between the parties; if no place for delivery is specified or agreed delivery shall take place at the Company's head office immediately prior to loading for despatch to the Customer
- 4.3 The Goods shall be at the risk of the Customer:
- (a) if they are delivered to the Customer's own premises by the Company's own transport from the time at which they are unloaded from such transport
 - (b) in any other case from the time they are loaded on the vehicle on which they are to leave the Company's premises en route to the Customer whether such vehicle is the Customer's or a third party's vehicle
- 4.4 The Company shall be entitled to make delivery of the Goods by instalments and to invoice the Customer for each instalment despatched
- 4.5 The Customer shall prepare the area of delivery and installation for the Goods and provide the Company (including its employees, agents and or subcontractors) with free access to the Premises and area of

installation and to any information required for the performance of its obligations or service of facilities that it may be required to deliver. Where the same has not been provided the Company shall be entitled to charge the Customer for the same and the Customer shall indemnify the Company in respect of all loss damages costs and expenses howsoever incurred in such circumstances. The Customer shall ensure that the area of delivery is safe and without risk to the Company's employees agents and or subcontractors

5 Inspection

5.1 The Customer shall inspect the Goods immediately upon their arrival at the destination to which they are despatched pursuant to the Contract for the purpose of ascertaining:

- (a) whether the Goods have been damaged in transit
- (b) that the Goods are those and in the quantity specified in the Customer's order stated on the Company's delivery note

5.2 Any discrepancy between the Goods delivered and those described in the Company's Delivery Note or specified in the Customer's order and any damage to the Goods in transit must be notified to the Company in writing within three working days of the Customer's receipt of the Goods. In the case of non-delivery of the Goods the Customer must notify the Company in writing within three working days of the receipt by the Customer of the Company's delivery note or invoice (whichever is the earlier). Without prejudice to the provisions of Condition 4 no claim in respect of non-delivery or damage in transit will be entertained by the Company unless the provisions of this Condition are complied with by the Customer.

6 Cancellation of Orders

6.1 The Customer shall not be entitled to cancel an order (or any part of an order) which has been accepted by the Company except upon prior written agreement by the Company and upon such terms as will indemnify the Company for all costs charges expenses damage or loss (including without limitation loss or profit) incurred or suffered by the Company in respect of each such order. The Company is not bound to agree to any such cancellation and may complete the Contract notwithstanding any purported cancellation from the Customer.

7. Payment

7.1 Payment for the Goods or Services shall be made not later 28 days from the date of the relevant invoice.

7.2 If the Customer fails to comply with its payment obligations the Company may withhold despatch of any part of the Goods remaining to be despatched suspend its performance of any other contract between it and the Customer or require the Customer to pay for Goods prior to their despatch from the Company's premises or Services prior to performance.

7.3 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment all sums owing from the Customer to the Company shall immediately become due and payable.

7.4 All amounts due from the Customer in payment for the Goods which are not paid on or before their due date for payment shall bear interest both before and after judgment until actual payment at the rate of 4% per annum above HSBC Bank Plc's base lending rate prevailing at the due date for payment and thereafter from time to time.

7.5 The Customer shall not be entitled to set off against sums due to the Company under the Contract any amount claimed by the Customer from the Company whether under the Contract or some other contract between them or on any other account provided that the Customer shall be entitled to set off against sums due to the Company valid credit notes issued to the Customer by the Company

8 Title to the Goods

8.1 Title to and property in the Goods shall remain vested in the Company (notwithstanding their delivery and the passing of the risk therein to the Customer) until:

- (a) the price of the Goods; and
- (b) all other money payable by the Customer to the Company on any other account or pursuant to any other contract whether or not due for payment

has been paid discharged or satisfied in full

8.2 Until title to and property in the Goods pass to the Customer the following provisions shall apply:

- (a) the Company may at any time without prior notice to the Customer require the Customer to deliver up to the Company the Goods and may repossess and resell the Goods if any of the events specified in Condition 17 occurs or if any sum due from the Customer to the Company under the Contract or on any other account or pursuant to any other contract is not paid on the due date for payment For the purpose of exercising its rights under this sub-paragraph the Company its employees or agents together with any vehicles and plant considered by the Company to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon and access to the Customer's premises and/or other locations where any of the Goods are situated
- (b) the Customer shall store the Goods in a proper manner in conditions which adequately protect and preserve them without charge to the Company and shall not tamper with any Company identification upon the Goods or their packaging but shall ensure that they are clearly identified as belonging to the Company Without prejudice to sub-paragraph 8.2(a) above the Company shall be entitled to examine the Goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so and to enter upon any premises owned or occupied by or access to which is controlled by the Customer for that purpose

8.3 The rights and remedies conferred upon the Company by this Condition 8 are in addition to and shall not in any way prejudice limit or restrict any other rights or remedies of the Company under the Contract

8.4 The Customer is authorised to sell the Goods in the ordinary course of its business as agent of and for the account of the Company and to pass good title in the Goods to its customers if they are purchasers in good faith without notice of the Company's rights. This right shall automatically cease on the occurrence of any event specified in Condition 17 and/or if any sum owned by the Customer to the Company is not paid on the due date

8.5 All software comprised in any Goods is owned by third party suppliers who determine the terms upon which software is licensed. The Company either grants the Customer (i) with effect from the actual date of

delivery of the software a non-exclusive non-transferable licence to use the software for its own internal purposes only and in accordance with the third party supplier's standard licensing terms and for operation in an environment deemed suitable under those terms a copy of which can be provided on written request or (ii) shall procure the grant of licence directly from the third party supplier to the Customer to enable the Customer to use the software on the terms specified by the third party supplier

8.6 The Customer hereby indemnifies the Company against any loss of any kind which it may suffer as a result of any breach by the Customer of a licence granted pursuant to this clause

8.7 For the avoidance of doubt title to the software and all documents relating to the software shall remain with the third party at all times

9 Performance of the Contract

9.1 Dates or periods for despatch or delivery of the Goods are approximate and shall not be binding. If having used its reasonable endeavours to comply with any date or dates specified in the Contract for the despatch or delivery of the Goods to the Customer the Company is unable to do so such failure shall not constitute a breach of contract by the Company entitling the Customer to terminate the Contract and/or to claim any damages whatsoever against the Company but the Company shall be entitled to a reasonable extension of time in which to effect despatch or delivery

9.2 If the Company is delayed or hindered in or prevented from performing the Contract or any part thereof by circumstances beyond its control such as (without limitation) industrial disputes, fire, severe weather conditions, decisions or actions of any government or other authority, shortages of materials, power or machinery breakdown or failure, war, threat of war, interruption or reduction in communications or means of transport then the Company may suspend further performance of the Contract for so long as it is so delayed or prevented or hindered and such suspension shall not constitute a breach of the Contract on the part of the Company

9.3 If performance of the Contract is suspended under Condition 9.2 the Company shall notify the Customer in writing of any such suspension of performance of the Contract and if such suspension continues for more than eight consecutive weeks either the Company or the Customer may by notice in writing to the other terminate the Contract but without prejudice to the Company's right to be paid in accordance with the Contract for any part of the Goods which may have been despatched to the Customer prior to the suspension of performance by the Company and to be reimbursed all other costs, charges and expenses incurred by the Company pursuant to the Contract up to the date of such notice of termination where it is given by the Company and up to the date of receipt thereof by the Company where it is given by the Customer

9.4 If the Company so agrees the Customer may collect the Goods in which case the Customer shall collect them within 3 days of being notified that they are ready for collection failing which the Company may despatch the Goods at the Customer's risk and expense or store them in which event the Customer shall pay the Company's reasonable storage charges and the Goods shall be stored at the Customer's risk

9.5 If performance of the Contract is suspended following acceptance by the Company of a request by the Customer or delayed through default by the Customer (including without limitation lack of incomplete or

incorrect instructions or refusal to collect or accept delivery of the Goods) the Company shall be entitled to payment in accordance with the Contract for any part of the Goods which may have been despatched to the Customer or are ready for despatch or are being manufactured prior to the suspension or delay and for loss or profit and any other additional costs incurred by the Company including storage insurance and interest provided that:

- (a) if the Customer fails to collect or accept delivery of the Goods or any part of them within 28 days of written notification from the Company that the Goods are ready for collection or delivery the Company shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell the Goods and to apply the proceeds of sale (if sold) towards payment of all sums due to the Company under the Contract
- (b) The Goods shall be stored at the Customer's risk from the date upon which they are ready for despatch

9.6 Unless expressly otherwise agreed in writing all illustrations and dimensions shown in any Company catalogue or sales literature are approximate and the Company gives no guarantee or representation that the Goods will in all cases be identical with the illustrations and dimensions

10 Acceptance of the Goods by the Customer

10.1 Without prejudice to the provisions of Condition 11 the Customer shall be deemed to have accepted the Goods as being in accordance with the Contract unless within 15 working days of receipt of the Goods the Customer notifies the Company in writing of any defects in materials or workmanship or failure to comply with designs drawings specifications or other data supplied by the Customer or any other failure of the Goods to conform with the Contract which would be apparent upon such inspection and testing of the Goods as it is reasonable for the Customer to undertake within 15 working days

11 Warranty

11.1 If the Customer establishes to the reasonable satisfaction of the Company that:

- (a) there is a defect in the materials or workmanship of the Goods or Services or
- (b) where designs drawings operations and other data relating to the Goods are supplied by the Company there is a defect in the design of the Goods or
- (c) where designs drawings specifications and other data relating to the goods are supplied by the Customer there is a failure on the part of the Company to provide the Goods in accordance with such designs drawings specifications or other data or
- (d) there is some other failure on the part of the Company in relation to the Goods or Services or conformity with the Contract

then the Company shall at its option either:

- (i) repair or make good such defect or failure in the Goods or Services free of charge (including all costs of transportation of the goods to and from the parties for that purpose) to the Customer or
- (ii) in relation to such defective Goods or failure to re-supply goods or Services which are in all respects in accordance with the Contract or

- (iii) agree with the Customer that the Customer will retain the Goods in the condition in which they are in consideration of a reduction in their price to compensate the Customer for the defect or failure

Subject in every case to the remaining provisions of this Condition

11.2 Paragraph 11.1 of this Condition ("**the Warranty**") shall not apply:

- (a) unless the Customer notifies the Company in writing of the alleged defect or failure immediately upon its first becoming aware thereof and in any event within (12 months) of the delivery of the Goods to the Customer under the provisions of Condition 4 or the date the Service was performed and
- (b) unless the Customer as soon as reasonably practicable after first becoming aware of the alleged defect or failure (and in any event before the Goods have been used by the Customer) returns a sample of the Goods where it is practicable to do so to the Company carriage paid for inspection examination and testing and in any other case permits the Company to have access to the Goods at the Customer's premises or other location where they may be for such purposes

11.3 If the Company elects to replace the Goods it shall at its own expense deliver the replacement Goods to the Customer at the address at which the defective or failed goods were located and the title to such replaced Goods shall (if it has vested in the Customer) re-vest in the Company and the Customer shall make any such arrangements as may be necessary for the purpose of delivering up the replaced Goods to the Company

11.4 The Guarantee is in substitution for any other legal remedy of the Customer in respect of the alleged defect or failure and the liability of the Company shall in all such cases and for all such purposes be limited to the obligations imposed by the Guarantee

11.5 Nothing contained in this Condition 11 shall operate so as

- (a) to exclude the liability of the Company for death or personal injury resulting from the negligence of the Company its employees or agents
- (b) to exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979

11.6 The Customer acknowledges that the Company is not the manufacturer of the Goods and that each item is subject to its own warranty from its manufacture. The Company will either obtain for the Customer the benefit of any standard end-user warranties in respect of the Goods (whether by assignment by the Company or directly from the manufacturer) or grant the Customer the same warranties granted to the Company by the manufacturer

11.7 The Customer agrees and undertakes to the Company to use the Goods in accordance with the manufacturers specifications and requirements

12 Limitation of Liability

12.1 Except as and to the extent provided in the Guarantee any term condition warranty representation or undertaking on the part of the Company as to the quality of the Goods or their fitness or suitability for any purpose or the standard of workmanship exercised in the performance of the Service however and whenever expressed or which may be implied by statute custom of the trade or otherwise is hereby

excluded and the provisions of Sections 13 to 15 inclusive of the Sale of Goods Act 1979 and Section 13 of the Supply of Goods and Services Act 1982 shall not apply to the Contract except where the Customer deals as consumer within the meaning of Section 12 of the Unfair Contract Terms Act 1977

12.2 Except as and to the extent provided by the Guarantee the Company shall not be liable to the Customer in contract tort or for breach of statutory duty for any direct loss or damage in excess of the value of the defective or failing Goods which the Customer may suffer by reason of any act omission neglect or default (including negligence) in relation to the Goods and/or or services the performance of the Contract by the Company its employees or agents

12.3 Except as and to the extent provided by the Guarantee the Company shall not be liable to the Customer in contract tort or for breach of statutory duty for any indirect or consequential loss (including economic loss) of any kind whatsoever which the Customer may suffer by reason of any act omission neglect or default (including negligence) in relation to the Goods or services and/or the performance of the Contract by the Company and its employees or agents

12.4 Nothing in this Agreement shall impose on the Company any liability in respect of any representation suggestion or comment with regard to the Goods or Services made by the Company its employees or agents in the course of any negotiations between the Company and the Customer leading to the making of the Contract unless in the case of any such representation the Company has expressly agreed in writing that it shall be a term of the Contract

13 Sub-contracting and Assignment

13.1 The Company shall be entitled to sub-contract the manufacture of the Goods or supply of the Services in whole or in part and to assign charge or sub-let the Contract or any part of it

13.2 The Customer shall not assign charge sub-let or otherwise transfer the Contract or any part of it without the prior written approval of the Company

14 Testing and Inspection prior to delivery

14.1 If the Contract provides for testing or inspection of the Goods by or on behalf of the Customer prior to delivery whether at the Company's premises or elsewhere then upon the Company giving notice of availability of the Goods for testing and/or inspection the Customer shall inspect and/or test the Goods within 7 days of such notice. If the Customer fails to do so or if within 14 days of the Customer having done so the Customer does not notify the Company that the Goods are not in accordance with the Contract specifying the matters complained of then the Customer shall be conclusively deemed to have accepted that the Goods are in accordance with the Contract and shall not thereafter be entitled to reject the Goods or to claim damages or compensation from the Company on the grounds of anything which such testing and/or inspection revealed or would have revealed if it had been carried out

15 Designs Drawings Specifications and other data

15.1 The Customer shall be solely responsible for the accuracy of its designs drawings specifications and other data supplied to the Company by the Customer its employees or agents and in conformity with which the Company is to manufacture the Goods notwithstanding that the Company may have examined inspected studied or commented to the Customer upon any such designs drawings specifications or other data

15.2 Where the Goods are to be manufactured in accordance with designs drawings specifications and other data supplied by the Customer then provided that the Goods are so manufactured the Company shall not be liable to the Customer in contract or in tort (including negligence) or breach of statutory duty for any loss or damage which the Customer may suffer because the Goods subsequently prove to be unsuitable for the purpose or purposes for which the Customer required them or prove not to be of Satisfactory quality within the meaning of the Sale of Goods Act 1979 or any other loss or damage which the Customer may suffer whether in contract or in tort (including negligence and breach of statutory duty) or otherwise whatsoever

15.3 The Customer shall indemnify the Company against all actions proceedings claims costs and expenses which may be brought against or incurred by the Company by reason of manufacture and supply of the Goods by the Company in accordance with such designs drawings specifications or other data whether or not it is alleged in such actions proceedings and claims that any patent trade mark design copyright design right confidential information or other intellectual property or other exclusive right of any third party has been infringed

16 Health & Safety

16.1 The attention of the Customer is drawn to the provisions of Section 6 of the Health & Safety at Work Act 1974 as amended ("the Act") The Company will make available such information and revisions thereof as are appropriate relating to the Goods in its possession to ensure that as far as is reasonably practicable the same are safe and without risks to health for use at work at all times

16.2 The Customer hereby undertakes pursuant to Section 6(8) of the Act to take such measures as are communicated in writing to it by the Company and to take such other steps as are sufficient to ensure so far as is reasonably practicable that the Goods will be safe and without risks to health for use at work at all times when they are being set used cleaned or maintained and shall not use them nor permit them to be used without regard to any relevant information or advice relating to their use which has been communicated to the Customer pursuant to this Condition

16.3 The Company shall not be liable to the Customer in any civil proceedings brought by the Customer against the Company in respect of or under any health and safety regulations orders or directions made pursuant to the Act or under any other directive regulation order or other instrument relating to health and safety where such exclusion of liability is permitted by law

16.4 The Customer shall indemnify and keep indemnified the Company in respect of any liability monetary penalty or fine in respect of or in connection with the Goods incurred directly or indirectly by the Company under the Consumer Protection Act 1987 the Act or any directive regulation order or direction made thereunder or any directive regulation order or other instrument relating to health and safety

17 Breach of Contract by or Insolvency of the Customer

17.1 If any of the following events occurs or in the opinion of the Company is reasonably likely to occur:

- (a) the Customer commits any breach of the Contract or any other contract between the Customer and the Company (or any company in the Group) or
- (b) any event which would entitle a landlord of the Customer to exercise any right of hypothec against the Goods or

- (c) any distress execution or diligence is levied upon any of the goods or property of the Customer and is not paid out within 7 days or
- (d) the Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors generally or there is presented in relation to the Customer or any such partner:
 - (i) a petition of bankruptcy
 - (ii) a petition for sequestration or
- (e) the Customer (being a limited company) appears to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or calls a meeting or presents or has presented a petition to wind up or presents or has presented a petition to appoint an administrator or has a judicial factor an administrative receiver receiver and manager or receive appointed of the whole or any part of its business undertaking property or assets

then the Customer's authority to sell Goods title to which is vested in the Company shall cease and then the Company may without prejudice to any other rights or remedies it may have against the Customer forthwith suspend further performance of the Contract or by notice in writing to the Customer terminate the Contract as it thinks fit Notwithstanding any such suspension or termination the Customer shall pay the Company in accordance with the Contract for all Goods despatched by the Company prior thereto and shall indemnify the Company against any loss liability or expense incurred by the Company in connection with the Contract including (without limitation) loss of profit liabilities and expenses in connection with raw materials and tooling obtained or produced for the purposes of the Contract and the cost of labour and overhead expenses reasonably attributable to the Contract

18 Waiver

- 18.1 The rights and remedies of the Company in respect of the Contract or in respect of any failure by the Customer to observe or comply with the terms thereof shall not be diminished waived or extinguished by the granting of any indulgence forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies

19 Lien and Set-off

- 19.1 Without prejudice to any other rights and remedies which the Company may have under the Contract the Company shall in respect of all debts owed by the Customer to the Company have a general lien on all goods and property belonging to the Customer in the Company's possession and shall be entitled upon the expiration of 14 days' notice to the Customer to dispose of such goods or property as the Company thinks fit and to apply any proceeds of sale thereof towards the payment of such debts
- 19.2 The Company shall be entitled to set off any sums owned by it to the Customer against any sums payable to the Company hereunder

20 Severance

- 20.1 If at any time any one or more of these Conditions (or any paragraph sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law the same

shall be deemed omitted herefrom and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be effected or impaired thereby

21 Headings

21.1 The headings to these Conditions are inserted for ease of reference and shall not affect their construction

22 Notices

22.1 Any notice authorised or required to be given pursuant to these Conditions shall in the case of a notice to the Company be sent to it at the address stated upon its acceptance of order from time to time or such other address as the Company shall from time to time notify the Customer and shall in the case of a notice to the Customer be sent to the Customer at its registered office or principal place of business if the Customer is a company and in any other case to the address of the Customer last known to the Company Any such notice may be given by post or facsimile transmission To prove service in the case of a notice given by post it shall be sufficient to show that the notice was despatched by first class recorded delivery service in a correctly addressed and adequately stamped envelope and to prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was despatched to the correct telephone number Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission

23 Law and Jurisdiction

23.1 The Contract shall be governed by and construed in all respects in accordance with English Law and the Company and the Customer hereby submits to the exclusive jurisdiction of the English Courts