

## 1. GENERAL

These terms:

**1.1** are written in plain and easy-to-understand English and should be read using the ordinary everyday meaning;

**1.2** should not be construed in any way as to try and give a word, phrase or expression a different meaning to the ordinary everyday meaning;

**1.3** are a complete and exclusive statement of the agreement between Blue Ocean Digital Ltd and the Customer for Blue Ocean Digital Ltd to supply work from time to time to the Customer;

**1.4** supersede all understandings or prior agreements, whether written or oral, and all representations or other communications;

**1.5** apply whenever business is conducted between us both;

**1.6** in no way confer on any third party the right to enforce any of the terms of this agreement in accordance with the Contracts (Rights of Third Parties) Act 1999.

Any hand written or typed amendments (or any other defacement) to these terms do not form part of these terms nor an amendment to them and must be disregarded in their entirety.

## 2. DEFINITIONS

The following words and phrases have special meanings in these terms:

"Blue Ocean Digital Ltd", "we", "us", "Company" or "our" refers to Blue Ocean Digital Ltd,

"Customer", "you" or "your" refers to the person, business or company from whom orders for work are received and with whom Blue Ocean Digital Ltd enter into a lawfully binding contract;

"suitable for the intended purpose" shall include ensuring that a computer file is of the correct format and correct type for its intended use. Example, colour bitmap images must be supplied as "CMYK tiffs"; therefore "RGB tiff" files are not "suitable for the intended purpose".

## 3. VARIATION OF TERMS

**3.1** may only be made if we expressly notify you in writing of a variation to this complete and exclusive agreement;

**3.2** shall not apply to any order that is in progress.

Any proposed alternative terms or a proposal to vary these terms in any form submitted by you (for example, on your purchase order) shall not be valid, nor shall any action by us (including the acceptance of an order purporting to be in accordance with any other terms or conditions) be construed as meaning that any alternative terms or conditions have been accepted.

## 4. PRICES, ESTIMATES AND ORDERS

We will:

**5.1** provide you with an estimate of the price to be charged for a particular order if you request one before an order is placed;

**5.2** provide such estimates based on our current costs of production;

**5.3** try to ensure that an estimate is valid for 30 days, although we may amend any estimate if it is necessary to do so.

It is your sole responsibility to:

**5.4** request an estimate before placing an order;

**5.5** confirm any price before placing an order and to eliminate any doubts you may have over the accuracy of any price before placing an order.

Estimates that we supply are not offers to enter into legally binding contracts, but are merely indications of the price that we charge to undertake a particular type of work.

It is your sole responsibility to ensure that the specification or description of the product or service that you are ordering is correct and will meet your requirements. We are not responsible for checking whether or not the product or service that you have asked us to supply is suitable for your own purposes.

## 6. VAT AND OTHER TAXES

All estimates given and orders accepted will be on a basis that excludes Value Added Tax (VAT) or any other taxes, duties or royalties etc. If any such tax, duty or royalty becomes payable on the sales price, we shall have the right to charge that amount.

## **7. PAYMENT TERMS**

You must:

**7.1** pay all amounts by the date they become due;

**7.2** not exceed any credit limit that we may apply to your account from time to time.

At our sole discretion, we may insist that you:

**7.3** pay a deposit or the full amount when the order is placed or at some time before the goods are delivered or collected.

**7.4** make a payment to ensure that you do not exceed any credit limit that may be applied to your account (which shall include orders placed but not yet invoiced);

We may:

**7.5** notify you from time to time of any changes to the dates by which amounts will become due, although any change will not apply to amounts already outstanding.

You shall indemnify us for the costs involved in pursuing any legal or debt collection actions against you (including taking the advice of a solicitor or barrister, charges made by a debt recovery agency, or time spent and costs incurred by our employees and/or directors in preparing and pursuing that legal action) to recover monies owed by you or from any third party who has given a guarantee or indemnity against any amounts owed by you. You also agree that any legal proceedings shall be dealt with by an appropriate Court of Law whose geographical location shall be of our choosing and which shall be within the locality of one of our offices or places of business.

## **8. CANCELLATION OF ORDERS**

If you cancel an order after we have commenced work on it, you shall be charged the full order value or such lower amount as we may (in our sole discretion) determine.

## **9. COMPUTER FILES AND VIRUSES**

You must ensure that:

**9.1** computer files supplied to us to be used in the production of artwork and/or printed work are suitable for the purpose for which they are intended, and that you "pre-flight" and thoroughly check those files to ensure their suitability. Your lack of knowledge of file types and file formats etc is not sufficient reason for supplying computer files which are not suitable for the purpose intended;

We may charge you for any additional work which we deem necessary where copy, artwork or files are not suitable for the purpose intended, whether supplied to us directly by you or by a third-party on your behalf.

You must also ensure that:

**9.2** any disks or files supplied are free from computer viruses and you shall 'virus check' all files before their supply to us. This applies whether the files are supplied on computer disk, by direct data transfer (such as by FTP link) or via the internet.

## **10 PROOFS AND ARTWORK**

You are responsible for:

**10.1** clearly, concisely, specifically and adequately conveying your requirements to us;

**10.2** ensuring that any originated artwork is suitable and adequate for your needs and purposes;

**10.3** thoroughly, properly and completely checking any proof for errors or omissions;

**10.4** clearly marking any necessary amendments on a proof;

**10.5** giving us your complete and absolute approval of a proof in a written form that has been approved by us, and giving us authority to proceed to print your work.

If you inform us in writing that you intend to waive the right to receive a proof (and we agree that a proof will not be provided), we shall incur no liability whatsoever for any errors not corrected prior to printing.

## **11. ILLEGAL OR UNLAWFUL MATTER**

We shall:

**11.1** not be required to print any matter which, in our opinion, is or may be of an illegal or libellous nature, an infringement of the proprietary or other rights of any third party (whether or not this fact was or is known at the time of acceptance of the order), or which may be prejudicial or detrimental to the good of our business;

**11.2** be indemnified by you in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent, design or of any other proprietary rights contained in any material printed, or work undertaken for you. The indemnity shall extend to any amounts paid on a lawyer or solicitor's advice in settlement of any claim.

## **12. QUALITY OF WORK**

In accordance with the Sale of Goods Act we must supply goods which are of a "satisfactory quality". This is defined by the Act as being a "standard that a reasonable person would regard as satisfactory taking account of the description of the goods, the price (if relevant) and all the other relating circumstances...the quality of goods includes their state and condition and the...fitness for all the purposes for which goods of the kind in question are commonly supplied (and their) appearance and finish...."

You shall:

**12.1** make sure that the work produced by us in general is of a standard which is acceptable to you before you enter into any contract with us;

**12.2** ask to be given samples of similar work produced by us and materials used to help you assure yourself of the standard of our work;

**12.3** be entitled to reject any work that is clearly defect, sub-standard and which does not comply with the requirements of the Sale of Goods Act as regards the description and the quality or fitness of those goods, although you shall not reject goods in any instance where the goods are not of a "satisfactory quality", when that failure is so slight that it is not reasonable to reject them.

You shall not be entitled to:

**12.4** reject goods in cases where you have supplied copy artwork or computer files which were not "suitable for the purpose intended" and where we did not realise that those files were not suitable before the printing or production of the goods;

The use by you of any of the goods or work supplied, or any part of those goods or work, shall constitute your full acceptance of the goods or work. You may not then reject those goods at a later date, and any earlier rejection shall be deemed to have been withdrawn.

## **13. DELIVERY OF GOODS**

If we are required to deliver goods we shall:

**13.1** despatch the goods within a reasonable time after the work is completed;

**13.2** reasonably ensure that the carrier, the method of carriage and how the goods are prepared or packaged for carriage are suitable such that the goods shall not be lost or damaged in normal transit.

If we are required to deliver goods you shall:

**13.3** accept delivery of goods when tendered;

**13.4** be charged for that delivery unless the price agreed for the work includes delivery charges, although you shall always be charged extra for expedited delivery;

**13.5** ensure that the goods are adequately insured during transit, although if you so desire we will arrange such insurance with the carrier on your behalf;

**13.6** indemnify us for any loss as a result of any failure by you to take delivery when tendered (this does not affect our right where your neglect or refusal to take delivery of the goods amounts to a repudiation of the contract).

For the purposes of the Sale of Goods Act;

**13.7** carriage arranged by us shall be on your behalf and delivery to you is deemed to have been made (for the purposes of the Act) when we give the goods to the carrier;

**13.8** the place of delivery shall be our premises at which the finished goods are made ready for collection or despatch.

If we are not required to deliver goods, you shall collect the goods from our premises upon notification that they are complete.

## **14. RETURNS POLICY**

**14.1** Any return of the Goods by the Customer shall be subject to the Returns Policy.

**14.2** In the unlikely event that the Goods do not conform to the Contract and the Customer wishes to reject or return the Goods to the Company, the Customer shall notify the Company by telephone as soon as possible after delivery of its wish to return or reject the Goods and shall confirm its reason for returning or rejecting the Goods in writing to the Company within three (3) Working Days in accordance with the Returns Policy.

**14.3** If the Goods are rejected under clause 14.9\* the Company's courier shall bear any and all costs of returning the Goods to the Company, if the Goods are returned on any other basis or for any other reason, then the Customer shall bear any and all costs of returning the Goods to the Company, subject to clause 14.4 below, in accordance with the Returns Policy.

**14.4** The Company shall inspect the returned Goods once received to determine whether, in the opinion of the Company, the Goods are faulty or do not conform to the Contract. If, in the opinion of the Company, the Goods are faulty or do not conform to the Contract then the Company shall, at its sole discretion:

**14.4.1** repair the Goods;

**14.4.2** replace the Goods;

**14.4.3** provide the Customer with a full or partial refund of the sums paid by the Customer for the Goods under the Contract; and/or

**14.4.4** provide the Customer with a full refund of any costs incurred in returning the Goods to the Company, subject always to the terms of this clause 14 and the Returns Policy.

**14.5** The Contract will apply to any repaired or replacement Goods supplied by the Company to the Customer in accordance with the Contract.

**14.6** If the Company elects, at its sole discretion, to provide the Customer with a full or partial refund in accordance with clause 14.4, the refund shall be subject to:

**14.6.1** the full compliance by the Customer to conditions outlined in the Returns Policy; and

**14.6.2** the payment by the Customer to the Company of a discretionary restocking fee of up to 15 % of the total price payable for the Goods under the Contract, which the Company, at its sole discretion, elects to charge to the Customer to reimburse the Company for any liabilities, costs, expenses, damages and losses incurred by the Company which are directly attributable to the Goods or the return of the Goods under the Contract, including (without limitation) any liabilities, costs, expenses, damages and losses incurred by the Company in communicating with the Customer, quoting for the Goods, preparing the Contract, invoicing for the Goods, packaging the Goods, labelling the Goods, arranging dispatch of the Goods, dismantling the Goods on return, re-boxing the Goods on return, checking for damage of the Goods on return, revising the stock chart at the Company's premises following the return, issuing a credit note to the Customer, postage costs (including courier charges) in relation to the Goods and any general expenses or inconvenience caused to the Company, in accordance with the Returns Policy (the Restocking Fee), for the avoidance of doubt the Parties agree that, if applicable, the Restocking Fee may be deducted by the Company from any sums refunded to the Customer in accordance with the Returns Policy.

**14.7** If, upon inspection by the Company under clause 14.4 above, the Goods are found to have been supplied in accordance with the Contract, the Company shall have no further obligation in relation to the Goods and the Customer shall pay all sums due to the Company in relation to the Goods under the Contract.

**14.8** Subject to Condition 14.9 below, the Customer does not have a general right to reject or return the Goods under the Contract and furthermore, for the avoidance of doubt, the Customer has no general right to a refund of the price paid for the Goods under the Contract.

**14.9** Consumer rights

**14.9.1** If the Customer is a consumer (as defined in the Consumer Protection (Distance Selling) Regulations 2000 as amended), the Customer may cancel the Contract at any time within seven (7) Working Days, beginning on the day after delivery of the Goods. In this case, the Customer shall receive a full refund of the price paid for the Goods under the Contract in accordance with the Returns Policy.

**14.9.2** To cancel a Contract under clause 14.9.1, you must inform us in writing. You must also return the Goods to us immediately, in the same condition in which you received them, and at your own cost and risk. You have a legal obligation to take reasonable care of the Goods while they are in your possession. If you fail to comply with this obligation, we may have a right of action against you for compensation.

**14.9.3** Details of this statutory right, and an explanation of how to exercise it, are provided in the Returns Policy. This provision does not affect your statutory rights.

## **15. LIABILITY ARISING FROM DELAY**

We shall not be liable for any loss (whether actual or consequential) arising from delay in the performance of any order or of finished goods in transit. Time shall not be the essence of any order notwithstanding any action by us that purports to guarantee a delivery or collection time or date.

## **16. CLAIMS AND QUERIES**

All claims and queries:

**16.1** regarding the goods supplied (including shortages, errors etc) must be made by you in writing within three working days of the date of delivery or collection;

**16.2** regarding any invoice must be made by you within ten working days of invoice date, and queries regarding non-delivery must be made by you within five working days of the invoice date;

**16.3** will not normally be entertained unless they are made within these time limits;

If you have the right to reject any goods:

**16.4** you must firstly obtain our written consent and then return those goods in their entirety to us at your expense within 7 working days;

**16.5** returning goods without consent shall in no way extinguish or reduce your liability to us for full payment of the goods and for late payment interest.

We shall not be liable in respect of any claim unless the notification requirements above have been complied with. In addition, any claim or counterclaim made against us in a Court of Law must be commenced by you within six months of the date on which we provided a service to you, despatched goods to you or on which goods were made available for collection.

#### **17. RESERVATION OF TITLE**

Title on any goods supplied shall only pass to you when paid for in full, taking into account any interest relating to late payment.

Until title to the goods passes you shall:

**17.1** keep the goods secure, in good condition and adequately insured;

**17.2** keep the goods separately in such a way that they may be identified or retrieved.

If you subsequently sell the goods:

**17.3** you will be acting as our agent subject to these Terms and Conditions;

**17.4** we shall have a lien over the money(s) resulting from such sale;

**17.5** you shall indemnify us from any costs or expenses arising from the sale, and we shall in no way whatsoever bear any liability from the sale.

#### **18. FORCE MAJEURE**

We shall be under no liability if we are unable to carry out any provision of a contract for any reason beyond our control, including (without limiting the foregoing): acts of god, legislation, war, fire, flood, draught, failure of power supply, mechanical breakdown, lock out, strike or other action taken by employees in contemplation or furtherance of a dispute, or an inability to procure materials required for the performance of the contract. During the continuance of such a contingency, you may by written notice elect to terminate the contract but you shall pay for work done and materials used or specially purchased, but subject thereto shall otherwise accept delivery if and when available.

#### **19. INSOLVENCY OF CUSTOMER**

Without prejudice to other remedies, we shall have the right not to proceed further with any order and be entitled to charge for work already carried out (whether completed or not) and materials purchased for you if:

**19.1** you cease to pay your debts in the ordinary course of business or cannot pay your debts as they become due; or

**19.2** being a company, you are deemed to be unable to pay your debts, or have an administration order or a winding-up petition issued against you; or

**19.3** being an individual, partnership or unincorporated body, you commit an act of bankruptcy or have a bankruptcy petition issued against you.

This charge shall be an immediate debt due to us.

#### **20. APPLICABLE LAW**

These Terms and Conditions and any orders placed shall be made in, governed by, and construed in accordance with the Law of England.