

# "talkingdesign" terms and conditions

## Standard Terms and Conditions of Business

### 1. Definitions

In these terms and conditions:

(i) the "Company" means Talking Design Limited;

(ii) the "Customer" means any person, Company or company at whose request work is performed or goods are supplied.

(iii) "Price" means the amount due from the Customer to the Company in respect of work performed or Goods supplied by the Company to the Customer;

(iv) "Goods" means any goods the Company is to supply to the Customer;

(v) the headings are for convenience only and are not to be used in their interpretation;

(vi) words importing any one gender shall include all other genders; words importing the singular number shall include the plural number also and vice-versa; and words importing persons shall

include corporations and firms.

### 2. Conditions applicable

(i) These terms and conditions of sale shall apply to all contracts where the Company undertakes work for the Customer and/or where Goods are to be supplied by the Company to the Customer to

the exclusion of all other terms and conditions.

(ii) No variation of these terms and conditions of sale shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.

3. Price Variation. Estimates are based on current costs of materials and labour unless otherwise agreed in writing, are subject to amendment on or at any time after acceptance to meet any rise or fall

in such costs.

4. Preliminary Work. All work carried out, whether experimentally or otherwise, at a Customer's request shall be charged to the Customer unless otherwise agreed in writing before work is started.

5. Copy. Where copy supplied to the Company is not clear and legible or where changes are made by or on behalf of the Customer beyond the Company's control a charge may be made by the

Company to the Customer to cover any additional work involved.

6. Proofs. Proofs of work may be submitted for a Customer's approval but the Customer shall incur no liability for any errors not corrected by the Customer in proofs submitted. A Customer's alterations

and additional proofs necessitated thereby shall be charged extra.

### 7. Price, Delivery and Payment

(a) The Price shall be the Company's price. All Prices quoted are valid for 30 days only or until earlier acceptance by the Customer after which time the Company may alter them without giving notice to

the Customer. The Price is exclusive of VAT, which shall additionally be due from the Customer to the Company at the rate ruling on the date of the Company's invoice.

(b) The risk in the Goods shall pass to the Customer as from delivery.

(c) Work undertaken or Goods delivered shall be invoiced when delivered or, if earlier, upon notification to the customer that the work has been completed or that the Goods are ready for delivery. Where

work undertaken is part complete at the end of any calendar month, the Company reserves the right to invoice work that has not previously been charged for at that date. Work undertaken or Goods

delivered to the Customer are deemed to be accepted upon receipt by the Company of an acceptance document signed by the Customer or seven days after delivery if the Customer has not given any

written notice of non-acceptance, whichever is the sooner. Payment for work undertaken or Goods delivered is due within 30 days of the Company's invoice. Time of payment shall be of the essence.

(d) Unless otherwise specified the price quoted excludes delivery of the work or Goods to the Customer's address or any other address.

(e) Should expedited delivery be agreed an extra fee may be charged to cover any overtime or any other additional costs involved.

(f) Should work be suspended at the request of or delayed through any default of the Customer for a period of 30 days the Company shall then be entitled to payment for work already carried out,

materials specially ordered and other additional costs at the standard rates of the Company therefore from time to time prevailing.

(g) The Company reserves the right to charge interest at the rate of 1% per month or part month on any balances overdue for payment.

8. Print Quantities. Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5 per cent for work in one colour only and 10 per cent for other

work, being allowed for overruns or shortages.

9. Claims. Notice of damage, delay or partial loss of Goods in transit or of non-delivery must be given in writing to the Company and the carrier within 3 clear days of delivery (or, in the case of nondelivery

within 28 days of despatch of the goods) and any claim in respect thereof must be made in writing to the Company and the carrier within 7 clear days of delivery (or in the case of non-delivery

within 42 days of despatch). All other claims must be made in writing to the Company within 28 days of delivery. The Company shall not be liable in respect of any claim unless the aforementioned

requirements have been complied with except in any particular case where the Customer proves that:

(i) it was not possible to comply with the requirements; and

(ii) notice (where required) was given and the claim made as soon as reasonably possible.

### 10. Liability

(a) In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price.

(b) (i) The Company shall not be liable for any loss or damage whatever owing to failure by the Company to deliver the Goods (or any of them) or any work undertaken by the Company for the Customer

promptly or at all.

(ii) Notwithstanding that the Company may have delayed or failed to deliver the Goods (or any of them) or any work undertaken by the Company for the Customer promptly the Customer shall be

bound to accept delivery and to pay for the Goods or the work concerned in full provided that delivery shall be tendered at any time within 3 months of the agreed delivery date.

(c) Except in respect of death or personal injury caused by the Company's negligence, 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 any contract, for any indirect, special or consequential loss or damage (whether for loss or profit or

otherwise), 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 any work undertaken by the Company or the supply of the Goods 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, except as expressly provided in these terms and conditions.

### 11. Standing Material

Artwork, illustrations, transparencies, computer files and all other materials owned by the Company and used by the Company in the production of film negatives, positives and the like shall remain the

Company's exclusive property. Such items when supplied by the Customer shall remain the Customer's property.

### 12. Customer's Property

(a) Customer's property and all property supplied to the Company by or on behalf of the Customer shall while it is in the possession of the Company or in transit to or from the Customer be deemed to be

at Customer's risk unless otherwise agreed in writing and the Customer should insure accordingly.

(b) The Company shall be entitled to make a reasonable charge for the storage of any Customer's property left with the Company before receipt of the order or after notification to the Customer of

completion of the work.

### 13. Company's Property

(a) In spite of delivery having been made property in any Goods shall not pass from the Company until:

(i) the Company shall have been paid the Price plus VAT in full; and

(ii) no other sums whatever shall be due from the Customer to the Company.

(b) Until property in the Goods passes from the Customer in accordance with clause (a) the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The

Customer shall store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

(c) Notwithstanding that the Goods (or any of them) remain the property of the Company the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for

the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when

making such sales or dealings. Until property in the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all

material times identified as the Company's money.

(d) The Company shall be entitled to recover the Price plus VAT notwithstanding that property in any of the Goods has not passed from the Company.

(e) Until such time as property in the Goods passes from the Company the Customer shall upon request deliver up to the Company such of the Goods as have not ceased to be in existence or resold to

the Company. If the Customer fails to do so the Company may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods. On the

making of such request the rights of the Customer under clause 13(c) shall cease.

(f) The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Company. Without prejudice to the other rights of the

Company, if the Customer does so all sums whatever owing by the Customer to the Company shall forthwith become due and payable.

(g) The Customer shall insure and keep insured the goods to the full Price against "all risks" to the reasonable satisfaction of the Company until the date that property in the goods passes from the

Company, and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the Customer fails to do so all sums whatever

owing by the Customer to the Company shall forthwith become due and payable.

### 14. Intellectual Property.

(a) No right or licence is granted to the Customer under any patent, trademark, copyright, registered design or other intellectual property right except the right to use or resell the Goods.

(b) The Customer agrees that any copyright and/or unregistered design right arising in pursuance to any work undertaken by the Company on behalf of the Customer or any Goods produced shall be

owned by the Company.

(c) Where any designs, specifications or other material have been supplied by the Customer to the Company then the Customer warrants that the use and/or possession of those designs, specifications

or other material or supply of the Goods do not infringe the rights of any third party and do not contain any illegal or defamatory matter. The Customer will indemnify and keep indemnified the Company

against any and all liability (including without limitation legal costs) arising out of any claim:

(i) of infringements or alleged infringements of any such third party; or

(ii) that such designs, specifications or other material contain illegal or defamatory matter.

15. Force Majeure. The Company shall be under no liability if the Company is unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing)

Act of God, legislation, war, fire, flood, theft, drought, failure of power supply, lock out, strike or other action taken by the Company's employees in contemplation or furtherance of a dispute or owing to

any inability to procure materials required for the performance of the contract. During the continuance of such contingency the Customer may give written notice to the Company to elect to terminate the

contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

16. Insolvency. If the Customer fails to make payment in accordance with these terms or conditions or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer

offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company

any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrative receiver or

manager shall be appointed over the whole or any part of the Customer's business or assets or if any petition for the appointment of an administrator is presented against the Customer or if the Customer

shall suffer any analogous proceedings under foreign law all sums outstanding from the Customer to the Company shall become payable immediately. The Company may in its absolute discretion and

without prejudice to any other rights, which it may have:

(i) suspend all future deliveries of goods to the Customer and/or terminate the contract or any other work being carried out for the Customer without liability on its part;

(ii) exercise any of its rights pursuant to clause 13;

(iii) charge for any work already carried out (whether completed or not) and materials purchased for the Customer such charge to be an immediate debt due to the Company; and

(iv) in respect of all unpaid debts due from the Customer have a general lien on all goods and property in the Company's possession (whether worked on or not) and shall be entitled on the expiration

of 14 days notice to dispose of such goods or property in such manner and at such price as the Company thinks fit and to apply the proceeds towards such debts.

17. Cancellation. The Company may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall promptly repay to the Customer

any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

18. Variation. No variation to these terms of contract shall be made unless agreed in writing by the Customer and the Company prior to any work being undertaken.

19. Law. These conditions and all other express terms of the contract shall be governed and construed in accordance with the Laws of England.