

TERMS AND CONDITIONS OF SALE

1. GENERAL.

(a) In these conditions:

"the Buyer" means the person firm or company who accepts a quotation of the Seller for sale of the goods or whose order for the goods is accepted by the Seller.

"the Seller" means GENIE IN THE GUTTER LTD, 88 Rodney Street, Liverpool, L1 9AR

"the Goods" means the goods or materials which the Seller is to supply and which is the subject of the contract between the Seller and the Buyer.

(b) The contract between the Seller and the Buyer shall be subject to these conditions which shall 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.

(c) No variations of these Conditions shall be binding unless agreed in writing by the Managing Director for the time being of the Seller.

(d) Any typographical, clerical or other error or omission in any sales literature, quotation, list price, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

(e) The headings in these conditions are for convenience only and shall not affect their interpretation.

(f) If any provisions of these conditions are 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. QUOTATIONS 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(a) Unless previously withdrawn by the Seller, quotations and tenders are open for acceptance for the period stated therein or if no period shall be stated therein within one month from the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 and tenders are subject to variation by the Seller without prior notice to the Buyer.

(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 charged to the Buyers.

(g) The quantity to be delivered shall be determined by GENIE IN THE GUTTER LTD's **order confirmation in writing**. Unless otherwise agreed the customer agrees to accept production related variations in quantity to be delivered of + / - 5% per title ordered. Any discrepancy's will be rectified at invoice.

Notwithstanding that the price paid by the Buyer to the Seller includes the cost of labels and/or sleeves to be used in the production and packaging of the goods to be supplied by the Seller upon the termination for whatsoever reason, of the contract the property in all the labels and/or sleeves not delivered to the Buyer and retained by the Seller shall vest in the Seller and the Buyer shall not be entitled to the labels and/or sleeves nor the return of the price of the said labels and/or sleeves nor any part thereof.

3. TERMS OF PAYMENT

(a) Payment shall be made net 30 days following the date of invoice.

(b) In 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 the Buyer and Seller as repudiated by the Buyer and to claim damages accordingly.

(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. 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 a date goods shall be delivered and accepted as soon as available for delivery.

(ii) Where contracts provide for deferred delivery without specifying a 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 with interest as aforesaid.

(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.

(v) Every effort shall be made by the Seller to effect 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.

5. CLAIMS

The Buyer shall inspect the goods forthwith upon delivery or deemed delivery as specific in clause 4(b)(iii) and shall within three days of such delivery (and time shall be of the essence) notify the Seller in writing 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 reasons 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.

6. LIMITATION OF SELLER'S LIABILITY

(a) 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.

(b) Subject to paragraph 5 and 6(a) 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 direction, to:

(i) Replacement and repair of the goods supplied or

(ii) Return of the purchase price and or the price paid for services less a one twelfth part of such price for each month that has elapsed since delivery

(iii) The re-supply of the services.

7. BUYERS PROPERTY

Any property of the Buyer supplied to the Seller for the purpose 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, lockouts, fire, flood, tempest and inability of the Seller to procure materials or articles required for the performance of the contract which may prevent the fulfilment thereof shall be regarded as causes beyond the Seller's reasonable control. In 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 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 or cleared funds payment in full the price of the Goods and all the 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 and 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 the 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, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in 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 the Goods to the Seller and, if the

Buyer fails to do 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 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 of 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 patent or registered design.

(b) No warranty or representation is given by the Seller that the Goods do not infringe any letters patents trademarks registered designs or other industrial rights.

12. WAIVER

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

13. 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.

14. CANCELLATIONS

No order accepted by the Seller can be cancelled without the Seller's consent in writing and in no circumstances can the Seller allow cancellation of orders for goods made or specially adapted to the customer's requirements.

15. ASSIGNMENTS

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

16. 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 Laws of England.

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Declaration of Warranty and Indemnity

The customer has entered into an agreement on with GENIE IN THE GUTTER LTD from hereon referred to as GENIE IN THE GUTTER LTD). The customer hereby warrants and guarantees vis-à-vis GENIE IN THE GUTTER LTD to the fullest extent, entitled to enter into this manufacturing agreement with GENIE IN THE GUTTER LTD, in particular that he is the legal owner of all applicable copyrights, rights to use and exploitation rights and that the carrying out of the manufacturing agreement in no way infringes upon any third party's rights. The sole responsibility and liability for any such infringement upon third party rights lies with customer.

In the event any claim will be raised against GENIE IN THE GUTTER LTD based upon such infringement of third party rights, customer will undertake to indemnify and hold harmless GENIE IN THE GUTTER LTD to the fullest extent from such third party claims. In addition, the customer will reimburse GENIE IN THE GUTTER LTD all resulting production costs as well as any cost of protecting and defending its rights. "Third Party Rights" as used in the aforementioned sentences include, but are not limited to, such rights the collection and enforcement of which has been assigned to collective exploitation associations such as

GEMA and MCPS and regardless in which matter intellectual property rights are being performed and broadcasted (for instance background music).

This declaration of warranty and indemnity shall apply to manufacture the above named title between GENIE IN THE GUTTER LTD and customer regardless of whether in all instances an explicit reference will be made to it or whether in all instances an explicit reference will be made to it or whether it will be attached to all future manufacturing agreements or not. It also applies with retroactive effect to Customers who in the past have not submitted such declaration of warranty and indemnity to GENIE IN THE GUTTER LTD.