

1. These conditions shall form part of all contracts for the supply of goods by Endesign Limited (herein called "the Company") to any other person (herein called "the Buyer") and shall prevail over any inconsistent terms or conditions contained in or referred to in the Buyer's order or in correspondence or elsewhere whether in writing or orally and in whatever form and all or any conditions or stipulations contrary to these are hereby excluded and extinguished. No employee has authority to vary or add to or depart from these terms or make any representation about the goods or the contract made herein.
2. Quotations by the Company shall not constitute offers.
3. All orders which are submitted to the Company by or on behalf of the Buyer shall be accepted entirely at the discretion of the Company. The Company shall not be deemed to have accepted any order unless it has previously issued to the Buyer the Company's standard order confirmation form ("the Order Confirmation").
4. A contract shall be formed between the Company and the Buyer at such time as the Company shall issue the Order Confirmation.
5. Notwithstanding anything stated in the Company's tender, all orders are accepted by the Company on the condition that the price of the goods shall be the list price of the Company current at the date on which the order is delivered ("the Price"). The Price shall be:
 - 5.1. exclusive of discounts;
 - 5.2. exclusive of Value Added Tax or any other tax or duties chargeable in respect of the supply of the goods;
 - 5.3. inclusive costs of packaging; and
 - 5.4. inclusive of costs of delivery to the location set out in the Order Confirmation or such other location as the parties may agree in writing.
6. If any sales taxes are chargeable in respect of the supply of goods, the Buyer shall pay such taxes to the Company in addition to the Price.
7. The Company reserves the right to increase the prices quoted should there be any increase in the cost of labour, materials, duties, taxes, rates of exchange, freight or other charges, expenses and costs payable by the Company.
8. The Company shall deliver the goods to the location set out in the Order Confirmation or such other location as the parties may agree in writing ("the Delivery Location").
9. The goods shall be deemed to have been delivered when the goods arrive at the Delivery Location.
10. All delivery dates mentioned by the Company are approximate only and not of contractual effect. Time of delivery is not of the essence of the contract nor shall the Company be under any liability in respect of any delay in delivery for whatever reason.
11. The Company may effect delivery of the goods in instalments and may invoice the Buyer for each instalment.
12. If for any reason the Buyer fails to accept delivery of the goods or the Company is unable to deliver the goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, then:
 - 12.1. the goods shall be deemed to have been delivered on the date for delivery notified by the Company to the Buyer;

- 12.2. risk in the goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence); and
- 12.3. the Company may (without prejudice to any other right or remedy available to it) do any or all of the following:
 - 12.3.1. arrange for demurrage and storage of the goods on behalf of the Buyer and charge, in addition to the Price, any and all costs incurred by the Company in respect of such delay, including (without limitation) the cost of demurrage, storage, insurance and redelivery of the goods;
 - 12.3.2. sell the goods for the Company's account; and
 - 12.3.3. cancel the Contract as regards any goods that remain to be delivered thereunder.
13. Time for payment shall be of the essence. Until otherwise agreed in writing by the Company payment of all sums due to the Company shall be made in full in the currency invoiced by direct bank transfer (free of all bank charges) as stated on the Company invoice.
14. Payment of any instalment due is a condition precedent to starting further deliveries.
15. If the Buyer fails to pay any sum on or before the due date, the Company may (without prejudice to any other right or remedy available to it) carry out any or all of the following actions:
 - 15.1. suspend all further deliveries until payment in full has been made;
 - 15.2. cancel any contract made with the Buyer in respect of which any goods remain to be delivered;
 - 15.3. charge the Buyer interest on such sum from the due date for payment at the annual rate of eight per cent. per annum above the Bank of England's base rate from time to time as provided for under the Late Payment of Commercial Debts (Interest) Act 1988 accruing on a daily basis until payment is made, whether before or after any judgement; and
 - 15.4. charge the Buyer for the cost and losses of the Company resulting from withholding deliveries due to the non-payment by the Buyer.
16. The Buyer shall not be entitled to withhold payment in whole or in part on the ground that it has any claim, counterclaim or set-off against the Company unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
17. The Company warrants that the goods supplied by the Company shall be:
 - 17.1. of satisfactory quality;
 - 17.2. reasonably fit for their purpose; and
 - 17.3. reasonably fit for any particular purpose for which the goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.
18. The Buyer shall be responsible for arranging for the testing and inspection of the goods, if required, upon delivery.
19. The Company shall not be liable for loss of or damage to the goods during transit to the delivery location unless;

- 19.1. the Order Confirmation provides that the Company shall be liable; or
- 19.2. within 7 business days of delivery, the Buyer gives notice to the Company that it has not received the goods or that the goods are damaged and specifying in reasonable detail the nature and extent of such damage.
20. The Company shall not be liable for a breach of any of the warranties in condition 17 unless:
 - 20.1. the Buyer gives notice of the defect to the Company;
 - 20.2. the Company is given a reasonable opportunity after receiving the notice of examining such goods;
 - 20.3. the defect is found (to the Company's satisfaction) to be due solely to the Company's faulty design, or due to defective material or workmanship; and
 - 20.4. the goods have not been subjected to neglect, carelessness or abnormal conditions, misused, or involved in any accident or attempt at repair, replacement or modification, or dealt with contrary to directions issued by the Company.
21. The Company's liability under condition 17 (whether based on negligence or any other cause of action) shall be limited to either (at the Company's option):
 - 21.1. replacing the lost, damaged or defective goods; or
 - 21.2. repaying a corresponding proportion of the Price paid by the Buyer in respect of such goods.
22. The warranties contained in condition 17 are specifically limited to those goods actually manufactured by or on behalf of the Company and is given in respect of the Buyer only. No warranty is made to any other person, whether a subsequent purchaser or user or to any bailee, licensee, assignee, employee, agent or otherwise.
23. All conditions, warranties or obligations (whether express or implied by statute, common law or otherwise) including, without limitation, any warranties in respect of third party intellectual property rights are excluded to the fullest extent permitted by law and the provisions of these conditions shall apply in lieu thereof.
24. Nothing in these conditions excludes or limits the liability of the Company:
 - 24.1. (if and to the extent that the Unfair Contract Terms Act 1977 applies to any contract), in respect of death or personal injury resulting from the Company's negligence, as that expression is defined in section 1 of that Act;
 - 24.2. arising under section 2(3) of the Consumer Protection Act 1987; or
 - 24.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - 24.4. for fraud or fraudulent misrepresentation.
25. Risk of damage to or loss of the goods shall pass to the Buyer upon delivery.
26. Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the Price of the goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

27. Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods in trust as the Company's fiduciary agent and bailee, and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Company'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 Company for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds. The said proceeds of sale shall be held in trust for the Company and in a manner which enables them to be identified as such and, in the case of tangible proceeds, properly stored, protected and insured.
28. 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 Company shall be entitled at any time to require the Buyer to deliver up the goods to the Company and, if the Buyer fails to do so forthwith, to enter upon the premises of the Buyer or any third party where the goods are stored and repossess the goods.
29. Upon termination of a contract for the supply of goods made with the Company, the Company's rights contained in condition 28 shall remain in effect.
30. The Buyer 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 Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
31. The Buyer shall be at liberty to incorporate the Company's goods into another product or chattel. If the goods are mixed or united in any way with those of the Buyer the final product shall become and be deemed to be for all purposes the property of the Company. If the Company's goods are mixed or united in any way with the property of any person other than the Buyer or are processed with or incorporated with such property, the final product shall become and shall be deemed to be for all purposes to be owned in common with that person.
32. No party shall be liable if the Company is delayed in or prevented from carrying out its obligations under the contract by act of God, riot, strike, lock-out, trade dispute or other labour disturbance, fire, flood, difficulty in obtaining workmen, materials or transport or by any other circumstances outside the Company's control.
33. There is no right to cancel any order without the consent of the Company.
34. The Buyer shall not be entitled to assign or transfer or purport to assign or transfer part or all of either or both of the benefit or burden of any contract for the supply of goods made with the Company to any person or business without the prior written consent of the Company.
35. The Company may assign or transfer any contract or any part of it for the supply of goods made with the Buyer to any person or business.
36. Except as expressly provided in these conditions, the Buyer shall have no rights in respect of any of trade marks, copyright, designs, databases, patents and inventions (whether or not any of those is registered and including applications for registrations of these) and all rights of the same or similar effect or nature in any jurisdiction ("Intellectual Property Rights") owned or licensed to the Company relating to the goods and the Buyer acknowledges that, except as expressly provided in these conditions, the Buyer shall not acquire any rights in respect thereof and that all such Intellectual Property Rights are and shall remain vested in or controlled by the Company.
37. No warranty is given to the Buyer in respect of any claims of infringement of the Intellectual Property Rights of a third party arising from the use, promotion or sale of the goods supplied by the Company.

38. The Buyer shall immediately inform the Company of any infringement of the Company's Intellectual Property Rights relating to the goods or of any claim that the goods or the Company's Intellectual Property Rights infringe the Intellectual Property Rights of a third party and shall:
 - 38.1. provide the Company (at the Company's cost) with all reasonable assistance in respect of taking or defending any action in respect of such infringement; and
 - 38.2. not make any statement to any third party which may prejudice the position of the Company, its bringing or defence of any claim and the conduct of any associated settlement negotiations.
39. Any notice to be given under these conditions shall be in writing and may be:
 - 39.1. hand delivered, or sent by pre-paid 'signed for' post or by courier addressed to the party to be served at the address for such party last known to the party giving the notice; or
 - 39.2. transmitted by facsimile to the facsimile number of the party to be served last known to the party giving notice; or
 - 39.3. sent by email to the email address of the party to be served last known to the party giving notice.
40. A notice shall be deemed served by:
 - 40.1. 'signed for' post or by courier upon the obtaining of a signature from an individual at the address stated on the envelope;
 - 40.2. facsimile upon receipt of a acknowledgement of delivery provided that the facsimile is sent during normal working hours on any business day, failing which the facsimile shall be deemed served on the next business day;
 - 40.3. email upon receipt of a 'read receipt' provided that the email is sent during normal working hours on any business day, failing which the email shall be deemed served on the next business day.
41. These conditions and any contract made with the Company and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with English law, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.
42. Nothing in these conditions or in any contract made with the Company shall limit the Company's right to take proceedings against the Buyer in any other competent jurisdiction.
43. No term of any contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999.