

MEGAFLATABLES LTD TERMS & CONDITIONS OF BUSINESS

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1 Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

- 1.1.1 **Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.3.
- 1.1.2 **Company:** Megaflatables Limited registered in England and Wales with company number 07412548.
- 1.1.3 **Contract:** the contract between the Company and the Customer for the supply of Goods or Services or Goods and Services in accordance with these Conditions.
- 1.1.4 **Customer:** the person or firm who purchases the Goods or Goods and Services from the Company.
- 1.1.5 **Deliverables:** the deliverables set out in the Order produced by the Company for the Customer.
- 1.1.6 **Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control, including but not limited to the non-availability of materials.
- 1.1.7 **Goods:** the goods (or any part of them) set out in the Order.
- 1.1.8 **Goods Specification:** any specification for the Goods, including any relevant plans, designs or drawings, that is approved by the Customer in writing.
- 1.1.9 **Hardware:** means hardware provided together with the Software including fans and/or blowers and excluding LED lights.
- 1.1.10 **Intellectual Property Rights:** means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in confidential information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 1.1.11 **Location:** means the address or addresses for delivery of the Goods and performance of the Services as set out in the Order or such other locations as the parties may agree.
- 1.1.12 **Losses:** all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses).
- 1.1.13 **Order:** the Customer's order for the supply of Goods or Goods and Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Company's quotation, as the case may be.
- 1.1.14 **Services:** the services, including any Deliverables, supplied by the Company to the Customer as set out in the invoice.
- 1.1.15 **Software:** means the inflatable.
- 1.1.16 **Warranty Period:** has the meaning given in clause 5.1.
- 1.2 Interpretation:
- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its successors and permitted assigns.
- 1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing** or **written** excludes fax but not email.
- 2 **Basis of contract**
- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Goods and Services from the Company in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order. The Company may accept or reject an Order at its discretion.

- 2.3 Any samples, drawings, descriptive matter, designs, reference images, illustrations or advertising issued by the Company are issued for the sole purpose of giving an approximate idea of the Goods and Services. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or that are implied by law, trade custom, practice or course of dealing.
- 2.5 Any designs or quotation given by the Company shall not constitute an offer and a quotation is only valid for a period of 30 days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3 Supply of Goods

- 3.1 The Goods are described in the Goods Specification.
- 3.2 The Customer shall indemnify the Company against all Losses incurred by the Company as a result of any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Company reserves the right to amend the Goods Specification if required by any applicable law or regulatory requirement, and the Company shall notify the Customer in any such event.

4 Delivery of Goods

- 4.1 The Company shall deliver the Goods to the Location or the Customer shall collect the Goods from the Company's premises (as the case may be) at any time after the Company notifies the Customer that the Goods are ready and full payment has been received by the Company.
- 4.2 Delivery of the Goods is completed on the completion of unloading of the Goods at the Location. If the Customer is collecting the Goods, delivery of the Goods is completed on the completion of loading of the Goods at the Company's premises.
- 4.3 The Services shall be deemed delivered by the Company only on completion of the performance of the Services at the Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- 4.5 Subject to clause 4.6 below, if the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

4.6 The Company shall have no liability for any delay in delivery or failure to deliver the Goods or Services that is caused by:

- 4.6.1 a Force Majeure Event;
- 4.6.2 the Customer's failure to make the Location available;
- 4.6.3 the Customer's failure to prepare the Location as required; or
- 4.6.4 the Customer's failure to provide the Company with adequate instructions for performance or delivery.

4.7 If the Customer fails to accept delivery of the Goods within fourteen days of the Company notifying the Customer that the Goods are ready for delivery or collection, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:

- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourteenth day following the day on which the Company notified the Customer that the Goods were ready; and
- 4.7.2 the Company shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 The Company may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 **Warranty**

5.1 The Company warrants that on delivery, and for a period of 30 days in respect of Software and for a period of 12 months in respect of Hardware from the date of delivery (**Warranty Period**), the Goods shall:

- 5.1.1 conform in all material respects with the Goods Specification; and
- 5.1.2 be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- 5.2.1 during the Warranty Period, the Customer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- 5.2.2 the Company is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost,

the Company shall, at its option and to the extent that it agrees that such Goods do not comply with the warranty set out in clause 5.1, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Company shall not be liable for any breach of clause 5.1 if:

5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

5.3.2 to the extent caused by the Customer's failure to comply with the Company's instructions as to the storage, commissioning, installation, use or maintenance;

5.3.3 the defect arises as a result of the Company following any drawing, design or specification supplied by or on behalf of the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of the Company;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage conditions.

5.4 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

5.7 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

6 **Title and risk**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery as set out in clause 4.2.

6.2 Title to the Goods shall pass to the Customer once the Company receives payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- 6.3.1 store the Goods separately from all other materials held by the Customer so that they remain readily identifiable as the Company's property;
- 6.3.2 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
- 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 keep the Goods insured against all risks for their full price on the Company's behalf from the date of delivery;
- 6.3.5 notify the Company immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4; and
- 6.3.6 give the Company such information as the Company may reasonably require from time to time relating to:
 - 6.3.6.1 the Goods; and
 - 6.3.6.2 the Customer's ongoing financial position.
- 6.4 At any time before title to the Goods passes to the Customer, the Company may require the Customer to deliver up all Goods in its possession and control, or irrevocably incorporated into another product, and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored, to recover them. The Customer shall procure entry to any such third party's premises if requested to do so by the Company.
- 7 **Customer's obligations**
 - 7.1 The Customer shall:
 - 7.1.1 ensure that the terms of the Order are complete and accurate;
 - 7.1.2 co-operate with the Company in all matters relating to the Services;
 - 7.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Location, and other facilities as reasonably required by the Company to provide the Services;
 - 7.1.4 prepare the Location for the supply of the Services; and
 - 7.1.5 obtain and at all times maintain all necessary licences, permissions and consents that may be required for the Goods or Services.

7.2 If the Company's performance of any of its obligations under the Contract is prevented by any act or omission of the Customer or failure by the Customer to perform any relevant obligation:

7.2.1 without limiting or affecting any other right or remedy available to it, the Company may suspend performance of the Services until the Customer remedies the default, and rely on the default to relieve it from the performance of any of its obligations in each case to the extent the default prevents the Company's performance of any of its obligations;

7.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 7.2; and

7.2.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer's default.

8 Price

8.1 The price for the Goods:

8.1.1 is the price set out in the Supplier's invoice;

8.1.2 is ex works Writtle and excludes the costs of packaging, insurance and transport of the Goods; and

8.1.3 VAT (or equivalent sales tax).

8.2 The Customer shall pay any applicable VAT to the Company on receipt of a valid VAT invoice.

8.3 The Company reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:

8.3.1 any factor beyond the control of the Company (including increases in labour, materials and other manufacturing costs);

8.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

8.3.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.

9 Payment

- 9.1 The Company will provide the Customer with an invoice on acceptance of an Order.
- 9.2 Subject to paragraph 9.5 below, the Company requires full payment of the invoice upon acceptance of the Order and production of the Goods will not commence until such payment has been received by the Company, except where alternative payment terms have been agreed by the Company and confirmed in writing to the Customer. If authorised in writing by the Customer, the Company may at its discretion commence production of the Goods prior to receiving payment in full. Where alternative payment terms are agreed, full payment must be made by the Customer prior to delivery of the Goods.
- 9.3 Where VAT applies, the Company will at any time following acceptance of the Order provide the Customer with a VAT invoice and the Customer will pay to the Company such additional amounts as are chargeable.
- 9.4 Time of payment is of the essence and the Customer must pay each invoice submitted by the Company:
- 9.4.1 on receipt of the invoice or in accordance with any credit terms agreed by the Company and confirmed in writing to the Customer; and
 - 9.4.2 in full without deduction or set-off, in cleared funds to a bank account nominated by the Company.
- 9.5 The Company may at its discretion agree credit terms with the Customer in writing. Unless otherwise agreed by the Company, settlement of credit accounts must be made within 30 days of issue by the Company of the invoice. The Company may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.
- 9.6 If the Customer fails to make a payment due to the Company by the due date, then, without limiting the Company's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10 Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or Services (other than Intellectual Property Rights in any materials or designs provided by the Customer) shall be owned by the Company.
- 10.2 The Customer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials or designs provided by the Customer to the Company for the term of the Contract for the purpose of providing the Goods or Services to the Customer.

11 Limitation of liability

- 11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including for negligence
- 11.2 Nothing in the Contract limits any liability which cannot legally be limited.
- 11.3 Subject to clause 11.2, the Company's total liability to the Customer shall not exceed the total price paid for the Goods or Goods and Services by the Customer.
- 11.4 Subject to clause 11.2, the Company shall not be liable for consequential or indirect losses.
- 11.5 Subject to clause 11.2, the following types of loss are wholly excluded:
 - 11.5.1 loss of profits (including loss of anticipated savings);
 - 11.5.2 loss of sales or business;
 - 11.5.3 loss of agreements or contracts;
 - 11.5.4 loss of or damage to goodwill.
- 11.6 The Company does not accept any responsibility for the suitability for any particular end use of the Goods supplied. The Customer acknowledges the limitations of inflatables depending on aerodynamic and acrobatic principles and climatic conditions. The Customer is responsible for the safe handling of the Goods at all times and for guarding against negligence in handling or utilisation in weather conditions when the use of an inflatable is not recommended.
- 11.7 In respect of helium filled inflatables, the Company provides no guarantee as to helium requirement, usage or leakage through fabrics or materials of manufacture.
- 11.8 This clause 11 shall survive termination of the Contract.

12 Termination

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 12.1.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 12.1.2 the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act

1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 12.1.2;

12.1.3 the other party suspends or ceases, or threatens to suspend or cease carrying on business; or

12.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

12.2 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

12.3 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or the Company reasonably believes that the Customer is about to become subject to any of them.

13 **Consequences of termination**

13.1 Where the Contract is terminated without fault by the Company, the Customer will pay to the Company a cancellation fee of:

13.1.1 50% of the total cost for the Goods where production of the Goods has not commenced; or

13.1.2 100% of the total cost for the Goods where production has commenced.

13.2 On termination of the Contract, the Customer shall:

13.2.1 immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

13.2.2 return all of the Company's materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and shall not use them for any purpose not connected with the Contract.

- 13.3 Termination of the Contract shall not affect the parties' rights and remedies, that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 13.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 14 **Force majeure**
- Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 60 days, the party not affected may terminate the Contract by giving not less than 14 days' written notice to the affected party.
- 15 **General**
- 15.1 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 15.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 15.2 **Entire agreement**
- 15.2.1 The Contract (together with any Variation (as defined below)) constitutes the entire agreement between the parties.
- 15.2.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract (or any Variation (as defined below)). Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 15.3 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.4 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.5 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.