

# The Collective Agency London Limited

## STANDARD TERMS AND CONDITIONS OF BUSINESS.

### 1. THE PARTIES AND CONTRACT

1.1 In these Standard Terms and Conditions ("Conditions"), The Collective Agency London Limited ("The Collective Agency") is the Supplier and you are the Customer (together the "Parties"). These conditions apply to all sales of Goods and supply of Services and save for any variation agreed in writing and signed by an authorised representative of each of the Parties; these Conditions shall govern this contract to the exclusion of all other terms and conditions.

1.2 All written Estimates, Pro Forma Invoices and Quotations (and where installation is required, a Programme of Works) shall be accompanied by these Conditions and represents what The Collective Agency is selling, the price it will cost and the Conditions under which it will be sold. Upon receipt of such a document; the Customer may offer to purchase the Goods and/or Services by signing, dating and returning these Conditions to the Supplier or by submitting a purchase order. **N.B.** It is the Customers responsibility to ensure that **before** placing an order for the Goods, that any relevant measurements /detailing etc for the Goods is completely accurate as orders cannot be amended once submitted. Where installation is to be undertaken by the Supplier, the Customer needs to ensure that the Programme of Works can be complied with in its entirety as the Supplier shall have no liability to the Customer in the event that the Goods cannot be installed as a result of the Customers' failure to comply with this condition. To avoid inaccuracies, the Supplier offers a pre-order survey service at the installation address at a cost of £150.00 + VAT + travel, accommodation, parking and other expenses properly incurred to undertake the survey. The liability to pay the Survey Fee arises on submission of the purchase order. The Survey Fee will be waived when the Customer places an order for installation. Where Customers do not proceed with the installation for whatever reason, the site Survey Fee shall be invoiced and payable in accordance with clause 2.2 below.

1.3 The Supplier will accept the offer by sending to the Customer an Order Confirmation which will contain an estimated delivery date, at which time a binding contract will exist between the parties. It is imperative that the Customer carefully checks that the Order Confirmation reflects the order intended to be placed and the address to which the Goods should be delivered and installed (if applicable) as orders may not be amended or cancelled after this point without the Supplier's written consent.

1.4 The Customer acknowledges that it has not relied on any statement, promise or representation made, or given by or on behalf of, the Supplier which is not set out in these Conditions. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations of the Goods or Services contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They do not form part of the Contract and have no contractual force. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade custom, practice or course of dealing. Where the Customer re-sells the Goods, it is the Customers' responsibility to ensure the ultimate purchaser is fully acquainted with and accepts these Conditions. No variation of these Conditions shall be effective unless expressly agreed in writing by the Suppliers authorised signatory.

1.5 These Conditions apply to the supply of both Goods and Services except where application to one or the other is specified.

1.6 The Supplier reserves the right to change these Conditions at any time. Amended Conditions will accompany Estimates, Pro Forma Invoices, Quotations, Programmes of work and Order Confirmation documents issued after the date of any amendment and the placing of further orders by the Customer or signed and returned Terms and Conditions shall signify the Customers acceptance to be bound by the latest Conditions. It is the responsibility of the Customer to check the Conditions sent with each Order Confirmation as those are the Conditions which will apply to any order placed.

### 2. PAYMENT

2.1 The price of the Goods and Services shall be the price set out in the Estimate, Pro Forma Invoice or Quotation (the latter of which shall be valid for 30 days) and in the absence of a price in such document; the Suppliers list price as at the date of such documentation. Prices are quoted net of VAT. VAT at the prevailing rate and Delivery charges (including packaging) are payable by the Customer as indicated upon the Estimate, Pro-Forma Invoice or Quotation. Prices are subject to change and discounts applied may be withdrawn on not less than 30 days' notice to take account of increases in costs of goods, materials, carriage, labour, overheads, duties or taxes levied in respect of the Goods and Services.

2.2 Payment for the Goods and Services and any Survey Fee shall be made in full at the time the order is placed to the Supplier's bank account detailed in the Estimate, Pro Forma Invoice or Quotation. For Customers who have a credit account with a sufficient credit limit, Goods and Services shall be paid for in accordance with their credit account terms. Time for payment shall be of the essence of the Contract. In the event that a Customer fails to comply with their credit account terms and the Suppliers' credit account department are required to take measures including but not limited to a chasing letter, a letter before action or online county court proceedings to recover any sum due to the Supplier; the Supplier reserves the right apply a surcharge of £50 to cover the Suppliers administration costs. In the event that solicitors or debt collectors are appointed to advise upon or pursue the recovery of overdue sums due to the Supplier; the Customer shall be responsible for all legal and recovery costs on a full indemnity basis whether or not legal proceedings are issued. VAT Invoices are issued when the Order is accepted which may be before or after the Order Confirmation is sent.

2.3 In the event of any default by the Customer of these payment terms; any discounts applied to the Customers' orders shall be cancelled and the full price for the Goods/Services shall become payable. In addition, the Supplier reserves the right to charge interest on overdue amounts which shall include any increase in the price payable by the operation of this clause 2.3, at the rate of 8% per annum on any overdue amount which interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount.

2.4 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.

### 3. GOODS AND SERVICES

3.1 Orders are accepted for Goods and Services by the Supplier strictly subject to availability and to these Conditions.

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3.2 The Supplier reserves the right to amend the Specification of the Goods if required so to do by the manufacturer or any applicable statutory or regulatory body.

## 4. GOODS

4.1 Save for uncut sheets of soundboard, all Goods supplied by the Collective Agency are **bespoke or special order Goods** (e.g. Soundboard cut to size or channeled, one off pieces of furniture etc.) in respect of which the Customer may not amend or cancel an order once an Order Confirmation has been issued signaling that the order is accepted and the contract binding. It is imperative that all Customer requirements are fully and accurately conveyed to the Supplier **prior to acceptance of the order** as the Supplier accepts no liability for any costs, expenses, damages and losses (including any direct, indirect or consequential losses) suffered or incurred by the Customer or any sub-contractor, agent or third party employed by the Customer arising out of any delay in delivery or installation of the Goods where such delay is caused by inaccuracies of whatever nature in the Customers order. If in doubt - have a survey.

4.2 To the extent that any element or component of the Goods is to be manufactured in accordance with colour and/or design specifications supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages, and losses (including any direct, indirect or consequential losses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Suppliers use of that element or component. This clause 4.2 shall survive termination of the contract howsoever determined.

## 5. DELIVERY

5.1 Delivery lead times vary according to the Goods ordered. The Supplier will use reasonable endeavours to obtain a quick and accurate delivery date which shall be provided in the Order Confirmation and if the Goods will not be delivered on this date, the Customer will be advised of the revised delivery date as soon thereafter as reasonably practical. Any date given for delivery of the Goods is approximate only and time of delivery is not of the essence. The Supplier reserves the right to deliver the Goods in more than one installment and any delay or failure to deliver any part of the Goods shall not entitle the Customer to treat the Contract as cancelled. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by events beyond its direct control nor the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.2. It is the Customers' responsibility to ensure any planned installation date takes account of these times. Installations to be undertaken by the Supplier will not be scheduled until after the delivery date has been confirmed by the manufacturer.

5.3 Delivery of the Goods shall be completed once the delivery vehicle arrives kerbside at the exterior access point of the delivery address. The delivery address shall be the address stated in the Customers purchase order. The Customers' signature recorded on the Delivery Note (or similar device operated by the carrier) shall be conclusive evidence of the quantities dispatched and delivered.

5.4 It is the responsibility of the Customer to ensure that appropriate arrangements are in place to:

(a) accept delivery of the Goods on the delivery date providing adequate manpower to unload the Goods from the delivery vehicle in a timely fashion (and for the sake of clarity within 30 minutes of the arrival of the delivery vehicle at the Delivery Address) and dispose of any transit packaging supplied. The delivery driver is not insured to assist in unloading the Goods or disposing of transit packaging; and

(b) for orders involving installation; arrange to store the Goods pending installation in climatic conditions that will emulate the climate of the area in which the Goods will be installed and in accordance with the manufacturers' instructions (if any) supplied upon delivery.

The Supplier accepts no liability for any loss of or damage to the Goods or any personal injury or death caused during the unloading of the vehicle.

5.5 If the Customer fails to accept or take delivery of the Goods in accordance with clause 5.4(a) above, then, save where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under this Contract; delivery of the Goods shall be deemed to have been completed within 30 minutes of the arrival of the delivery vehicle at the Delivery address and the Customer shall be liable for any waiting time charged by the courier employed by the Supplier after 30 minutes have elapsed. If the Goods cannot be delivered on the delivery date, the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance, additional transportation costs, storage, and re-delivery charges) incurred in this respect. In the event that the Goods are not re-delivered within 14 days of the original delivery date, the Supplier shall notify the Supplier that it intends to treat the Goods as abandoned and not less than 14 days thereafter, dispose of the Goods as it sees fit. Notwithstanding such action, the Supplier shall be entitled to enforce the payment terms of this contract in respect of any sums that remain unpaid. A Force Majeure Event means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

## 6. INSTALLATION

6.1 Save where the Customer has ordered installation of the Goods from the Supplier; the Customer shall be responsible for installing the Goods.

6.2 Where installation had been ordered with the Supplier, the Customer will receive a Programme of Works along with the Estimate, Pro Forma or Quotation which will describe the extent of the work to be undertaken, liability for any permissions or approvals required to facilitate the installation and the Working Conditions Specification ("Specification") which must be satisfied for the installation to commence. It is the Customers sole responsibility to ensure that the installation work description is accurate, the working conditions specification can be satisfied, and all legal and contractual permissions and authorities are in place **prior** to the installation date. This will include but is not limited to Planning Permissions, Building Regulation Approval, Release of Lease Covenants etc.

6.3 If the Customers' installation area does not comply strictly with the Specification, the installation shall be delayed until such time as the Customer is compliant with the Specification and the Customer shall be liable to the Supplier for all costs and expenses incurred by the delay. Without prejudice to the generality of this clause; time when appointed contractors are unable to install the Goods ("Downtime") shall be payable to the Supplier at the rate of £200.00 per man per day (based on an 8 hour day) plus full reimbursement of all travel, accommodation, subsistence allowance and other expenses properly incurred in anticipation of performance of the Contract and which cannot otherwise be

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recouped from the relevant provider by the Supplier ("Wasted Costs"). The Supplier accepts no liability for any losses, costs, penalties, damages or other monetary sums claimed in respect of the Customers failure to comply with the Programme of Works or any part of it and the Customer hereby agrees to indemnify the Supplier in respect of any and all costs, penalties, charges and other expenses incurred by the Supplier as a result of the Customers failure to comply with clause 6.2 above.

6.4 Where installation is delayed under clause 6.2 above; the Supplier may at its own discretion;

- (a) perform or assist the Customer to perform the work required to make the Customer installation area compliant with the Specification and the Customer shall be liable only for the additional costs associated with such works at the Wasted Costs rates specified in clause 6.3 above; or
- (b) delay the installation in accordance with clause 6.3 above and claim the Wasted Costs thereof; or
- (c) cancel the installation and refund to the Customer the sum left over after deduction of Wasted Costs and a £100 administration Fee and 50% of the net cost of the Goods (as per the Estimate, Pro Forma Invoice or Quotation).

6.5 In the event that the Customer changes a confirmed installation date less than 48 hours before the planned start time, the Customer shall be liable for any pre-booked Wasted Costs as detailed in clause 6.3 above.

## 7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds). Until title passes, the Customer shall hold the Goods on a fiduciary basis as the Supplier's bailee, store the Goods separately from all other Goods held by the Customer and maintain the Goods in new condition and keep them insured against all risks for their full retail price on the Supplier's behalf from completion of delivery.

7.3 In the event that the Customer proves unable, for whatever reason, to pay in full for the Goods, the Customer hereby irrevocably authorises the Supplier or its agents to enter the Customers' premises or the premises where the Goods are stored and take possession of the Goods supplied. Notwithstanding that title has not passed to the Customer in these circumstances; the Supplier shall be entitled to recover payment for the Goods together with all costs, expenses and fees incurred by the Supplier in taking the recovery action.

7.4 If any Goods which become subject to clause 7.3 above, are sold by the Customer to any third party before payment is made to the Supplier, the Customer shall ensure it is a sale at full market value and the Customer is acting as agent of the Supplier and the Suppliers contract of sale shall contain a retention of title clause which will have the same effect for the Customer as this clause 7 has for the Supplier but in addition all monies received by the Customer from such third party transactions are the property of, and will be claimed by the Supplier in satisfaction of and to the extent only of the unpaid Invoices and the costs of recovery detailed in clause 7.3.

7.5 On termination of this contract, howsoever determined, the Company's rights contained in this clause 7 shall remain in full force and effect.

## 8. CANCELLATIONS AND AMENDMENTS

8.1 Bespoke and special order Goods cannot be returned nor an order cancelled or amended after the Order Confirmation has been issued.

8.2 Orders which are not bespoke or special Orders may only be amended or cancelled if;

(a) the Customer formally notifies the Supplier in writing by email to [aftersales@thecollective.agency](mailto:aftersales@thecollective.agency) or telephone to Customer Services on 0203 633 3138; and

(b) the notification is received within 2 working days of the date of the Order Confirmation (because our supply partners are very responsive); and

(d) no Goods have been dispatched.

A fee of 10% of the order value (net of VAT) will be charged to cover administration costs in such cases. The Supplier reserves the right to reduce the above fee, in its sole discretion, when the amendment sought by the Customer is "de minimis" or there are other exceptional circumstances justifying the same.

8.2 Where Goods have been dispatched, the Customer may return Goods which are not bespoke or special order Goods within 14 days after delivery (as recorded by the Carrier) provided that the Customer follows the procedure notified by the Customer Service Department who may be contacted on 0203 633 3138 or by email at [aftersales@thecollective.agency](mailto:aftersales@thecollective.agency). Returned Goods must be returned to the Supplier at the Customers cost and in a new and unused condition with all original labels and packaging intact. A fee of 20% of the returned Goods value (net of VAT) will be charged to cover administration and re-stocking costs. Goods may not be returned unless written permission has been issued by the Suppliers Customer Service Department.

## 9. DAMAGES AND DELIVERY DISCREPANCIES

9.1 When signing for a delivery, the Customer is accepting that the content of the Order is correct and the Goods have not been damaged in transit. All deliveries must therefore be checked as soon as received and **before** the Delivery Note is signed and if the order is incorrect or damaged, the Customer should either refuse the consignment or record the discrepancy or damage on the Delivery Note. It is the Customers responsibility to ensure that the actions above are followed **before signing** as mistakes cannot be rectified once the Goods have been signed for. Any discrepancy in the consignment **must also** be notified to The Collective Agency by telephone on 0203 633 3138 or by email at [aftersales@thecollective.agency](mailto:aftersales@thecollective.agency) immediately upon delivery, and within 24 hours at the latest. Please note the time of delivery as recorded on the Delivery Note.

9.2 If a fault or damage is identified after delivery but before 48 hours have elapsed, the Customer should telephone The Collective Agency's Customer Services Department with full details of the Goods ordered and the fault or damage identified. At its sole discretion, the Supplier will either replace or repair the Goods. Reports of a fault or damage will not be entertained after the expiration of **48 hours** from the time of delivery as recorded on the Delivery Note or similar device operated by the carrier. The Customer should only return Goods following the procedures outlined by the Supplier at the time of the report.

## 10 WARRANTIES AND LIMITATION OF LIABILITY

10.1 The Parties acknowledge that the Supplier is not the manufacturer of the Goods supplied to the Customer under this Contract and the Customer shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer of the Goods to the Supplier. Full details

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of the manufacturer's warranty can be found in the manufacturers product information guide/warranty information booklet supplied with each of the Goods on delivery.

10.2 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 10.1 if:

- (a) the Customer makes any further use of such Goods after notifying the Supplier of a defect; or
- (b) the defect has arisen as a result of the Customer's failure to follow the manufacturer's instructions as to the installation, ambient environment, storage, care of and use of the Goods or, if there are none, good trade practice; or
- (c) the Customer alters or repairs the Goods without the prior written consent of the Supplier; or
- (d) the defect arises as a result of fair wear and tear, wilful damage or abuse, negligence, or the use of the Goods for a purpose other than the purpose declared or in abnormal use conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

10.3 Except as provided in this clause 10; the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 10.1 or otherwise.

10.4 Nothing in these Conditions excludes or limits liability for death or personal injury caused by the negligence of the Supplier, or fraudulent misrepresentation or any other liability that the Supplier may not otherwise exclude or limit under applicable law.

10.5 Subject to clause 10.4 above, the Supplier shall not be liable, in contract or tort, (including, without limitation, negligence), for pre-contract or other representations (other than fraudulent misrepresentations) or otherwise arising out of or in connection with these Conditions for any economic losses (including without limitation loss of profit, revenue, contracts, business or anticipated savings); loss of goodwill or reputation or special or indirect losses suffered or incurred by the Customer arising out of or in connection with the provision of the Goods and Services supplied in respect of this Contract.

10.6 Notwithstanding the above and subject to clause 10.4; the Suppliers aggregate liability (whether in contract, tort or otherwise) for loss or damage shall in any event be limited to a sum equal to the amount paid or payable by the Customer for the Goods in respect of one incident or series of incidents attributable to one cause.

## 11. GENERAL

11.1 These Conditions, including the documents referred to herein, supersede all prior representations, understandings, agreements and contracts between the Customer and the Supplier relating to the supply of Goods and Services and sets forth the entire agreement and understanding between the Customer and the Supplier.

11.2 Nothing in this Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any Party the agent of another Party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

11.3 A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.4 The Customer may not assign or sub-contract any of the rights or obligations imposed by this Contract unless agreed to in writing by the Supplier.

11.5 The Supplier reserves the right to transfer, assign, novate or sub-contract the benefit of the whole or part of any of its rights or obligations under these Conditions or any related contract to any third party.

11.6 No delay or failure by the Supplier to exercise any powers, rights or remedies under this Contract will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or any further exercise of them. To take effect any waiver must be in writing and signed by an authorised signatory of the Supplier.

11.7 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**I am an authorised signatory of the Customer. I have read and understand the Standard Terms and Conditions of Business of The Collective Agency London Limited and where applicable the Programme of Works and I confirm I wish to proceed with this and future Orders in accordance with the terms and conditions outlined.**

Signed ..... Dated.....

Print Name of Signatory..... Position.....

Please email the signed copy of these Conditions to: [aftersales@thecollective.agency](mailto:aftersales@thecollective.agency)

Or post to :  
Customer Services Department,  
The Collective Agency (London) Limited  
Second Floor The Workshop,

# The Collective Agency London Limited

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