

Collins Clayton & Co
Terms & Conditions of Sale

1. General

1.1 These Terms and Conditions shall apply to and govern all Contracts (as defined) between Collins Clayton & Co., Oatfield House, Campbelltown, Argyll PA28 6PH ("CC") and any person, firm, corporation or other body of persons acquiring Products from CC ("the Customer"). These Terms and Conditions take precedence over and exclude any terms and conditions the Customer may attempt to introduce.

1.2 In these Terms and Conditions:-

Confidential Materials means all and any confidential information which is disclosed to the Customer by CC in connection with the Contracts or shall otherwise come into the hands of the Customer in relation to CC's Business, the Products or the Process other than information which is already in the public domain;

Contract means any contract between CC and the Customer for the manufacture and /or sale of the Products;

Input Material means any and all photographs, images, design or text supplied by the Customer to CC for the purpose of creating the Products; **IPR** means any and all intellectual or industrial property rights of any description in any country (whether registered or registrable or not) including but not limited to patents, registered designs, unregistered design rights, copyright, database right, trade marks (whether registered or unregistered) and inventions in any form of media whatsoever carried out and/or used by CC in relation to the Products;

Franchise Agreement means any agreement entered into between the Franchisee and CC; **Franchisee** means the other party to a Franchise Agreement entered into with CC;

Order means the Customer's purchase order for the Products; **Output Material** means all reports, documents or other materials and/or data or other information relating to the Products;

Price means CC's list of prices as established from time to time as modified by the Franchise Agreement and exclusive of all charges for packing, packaging, shipping, carriage, insurance and delivery of the Products to the Customer (if applicable) and any imports, duties or levies including Value Added Tax if applicable unless specifically agreed otherwise by CC in writing;

Process means CC's commercially confidential process of preparing and manufacturing the Products;

Products means any product or trained sold by CC to the Customer including (but not limited to) engraved glass or stone products, presentation boxes, glue, mask-making equipment and materials, raw film, Stencils and training in the use of these items;

Specification means any specification agreed by the parties for the creation of the Products and includes but is not limited to any descriptions, drawings, illustrations and other descriptive information relating to the Products;

Stencil means each individual shot-blast engraving Stencil manufactured by CC using the Process and made at the request of the Customer in accordance with the Specification;

Trade Marks means the trade marks owned by CC.

2. Applicability of Conditions

2.1 These Conditions shall, subject to clause 2.4, be deemed to be incorporated in and shall govern all Contracts between CC and the Customer.

2.2 No waiver, alteration or modification of or addition to any of the provisions of these Terms and Conditions shall have any effect or be binding upon CC unless the same shall be in writing and signed by a partner or director of CC.

2.3 The statutory rights of the Customer are not affected by these Conditions.

2.4 In the event that the Customer is a Franchisee of CC then the terms of the Franchise Agreement shall prevail over any conflicting term herein.

3. Acceptance of Order

3.1 Orders for Products are submitted only upon and subject to these Terms and Conditions.

3.2 All Orders must be submitted to CC in writing unless otherwise agreed by CC and the Customer shall be responsible for ensuring the accuracy of each Order.

3.3 No Order shall be binding upon CC unless expressly accepted in writing by an officer of CC or by an employee of CC with actual authority to accept such Order.

3.4 The Customer may not, unless CC has given its prior written agreement, withdraw, cancel, defer or amend any Order placed or any Contract. Where such consent is given it is an express condition thereof that CC shall be reimbursed for all materials, labour costs and liabilities incurred by it for the purposes of that contract prior to cancellation together with a reasonable addition thereto in respect for loss of profit.

4. Prices

4.1 If the Price quoted by CC is exclusive of VAT, the Price of the Product shall be calculated at the date of acceptance of the Order.

4.2 Prices quoted by CC for Products are subject to variation and may be increased on 14 days notice prior to delivery for any reason.

5. Delivery and/or Provision

5.1 CC will make reasonable efforts to deliver the Products on the date agreed with the Customer.

Any date suggested by CC for delivery of Products is given as a guide only and time of delivery is not of the essence. CC will make reasonable endeavours to advise the Customer of any delays in delivery.

5.2 Delivery of the Products shall take place when CC posts or otherwise sends the Products to the delivery address stated by the Customer in the Order. Should CC arrange for an alternative mode of delivery of the Products it shall do so as the Customer's agent and the Customer shall indemnify CC on demand in respect of all costs and expenses incurred thereby.

6. Shortages, Damage and/or Loss in Transit

6.1 The Customer must:-

6.1.1 examine any Products delivered upon receipt;

6.1.2 notify CC in writing within 7 days of delivery of any shortage of, damage to or defect in the Products;

6.1.3 notify CC in writing of any latent defect in the Product within 7 days of the defect becoming apparent; and

6.1.4 afford CC and/or its agents reasonable opportunity to verify and/or inspect any damaged Products as delivered.

6.2 If the Customer complies with all of sub-clauses 6.1.1 to 6.1.4 above inclusive, the Customer's sole remedy in the event of any non-delivery, shortfall or shortage shall in CC's sole discretion be replacement by CC of the relevant Products.

6.3 If the Customer fails to comply with all or any of sub-clauses 6.1.1 to 6.1.4 above inclusive, CC shall not be liable for any such non-delivery, damage, defect, shortfall or shortage and the Customer may not reject such Products.

7. Risk

7.1 Risk in the Products will pass to the Customer on delivery.

7.2 The Customer shall insure the Products from the period from which risk in the Products passes until the passing of title in the Products to the Customer as detailed in clause 8 below for the full replacement value and the Customer shall, until sums due have been paid in full or in cleared funds, hold the insurance policy and any proceeds thereunder in trust for CC to the extent of the unpaid sums.

8. Property

8.1 The property in any Products supplied by CC shall not pass to the Customer until such time as CC is in actual receipt of the full amount due in respect thereof in cash or in cleared funds.

8.2 Until such payment, the Customer will have possession of the Products as trustee for CC and will ensure that the Products are properly stored, protected and insured and remain clearly identifiable as the property of CC and in the Customer's possession or control.

8.3 CC reserves the right to repossess any Products in respect of which payment is overdue and thereafter to resell same and for this purpose, the Customer shall immediately make the Products available for collection and grant to CC and its agents the right to enter upon the Customer's premises during normal business hours.

8.4 If the amount received by CC on the sale of any repossessed Products shall be less than the amount due by the Customer, either in respect thereof or any other grounds whatsoever, such repossession shall not extinguish the Customer's liability of either for any deficiency in the amount received by CC on such sale, or for damages in respect of any loss occasioned by CC as a result of its exercising its right hereunder.

8.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of CC, but if the Customer does so all moneys owing by the Customer to CC shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8.6 The Customer shall indemnify CC on demand, in addition to any other amount for which the Customer may be liable, for all costs, charges, expenses (including but not limited to legal costs) on a full indemnity basis occasioned by such exercise by CC of its said right to repossess.

8.7 If the Customer is situated outwith Scotland, the proceeds of any sale by the Customer to a third party shall be held by the Customer in trust for CC and CC shall be entitled to trace such proceeds in the hands of the Customer or any Trustee, Receiver or Liquidator of the Customer.

9. Payment

9.1 Unless otherwise agreed in writing, payment shall be made to CC by the Customer in full and in advance. Time shall be of the essence for such payment whether on these terms or on other terms agreed in writing by CC.

9.2 In the case of a Customer resident outside the United Kingdom, payment will if so required by CC, be made by confirmed irrevocable letter of credit issued by a bank acceptable to CC and lodged at a bank nominated by CC not later than the date on which the Contract is entered into. CC shall be entitled to payment under any such letter of credit on presentation to the bank of such letter of credit.

9.3 In the case of a credit account being agreed, the Customer contracts to pay in Sterling all charges for supplies and services, together with any VAT or other taxes or duties thereon, no later than the fifteenth day of the month following the month of invoice.

9.4 Without prejudice to CC's whole other rights and remedies, if any payment should become more than 28 days overdue, all further supplies will be automatically suspended until it has been received and CC shall be entitled to charge the Customer interest on any late payments at the greater of the rate of 2% compound interest per calendar month or part thereof from the date of invoice and the amount prescribed by The Late Payment of Commercial Debts (Interest) Act 1998 on the whole amount of any late payment until payment in full, whether before or after judgement.

10. Intellectual Property

10.1 The Customer must at the Customer's own expense, retain duplicate copies of all Input Materials and insure against its accident or loss or damage. CC does not accept liability for any such loss or damage, however caused.

10.2 The property and IPR in any Input Material shall belong to the Customer. The IPR in any Products shall, unless otherwise agreed in writing between the Customer and CC, belong to CC.

10.3 The Customer warrants that all Input Material will not infringe the IPR of any third party and the Customer shall indemnify CC on demand in respect of all losses, damages, costs, expenses and claims suffered by CC as a result of such infringement. The Customer confirms that all necessary permissions for the use of the Input Material by CC have been obtained.

10.4 Subject to clause 10.3 above, so far as CC is aware but after carrying out no enquiries, CC warrants to the Customer that any Products and their use by the Customer will not infringe the IPR of any third party. This warranty is granted in lieu of all other warranties which are excluded to the fullest extent permitted by law.

10.5 The Customer shall not infringe any IPR owned by or licensed to CC.

11. Confidentiality

11.1 The Customer shall not disclose and shall procure that its officers, employees, agents and consultants whomsoever do not disclose any Confidential Materials and/or IPR therein to any third party except where they have obtained the consent of CC or where it is or becomes public knowledge through no fault of the Customer.

11.2 The Customer will indemnify CC on demand (on a full indemnity basis) against all losses, damages, claims, costs and expenses (including, without limitation, legal expenses) incurred by CC arising directly or indirectly from any breach by the Customer of the foregoing obligations of this clause 11. These obligations will commence upon the date of CC's first contact with the Customer and shall subsist in perpetuity.

12. Liabilities

12.1 CC shall use reasonable endeavours to ensure that the Products comply with the relevant Specification in all material respects at the time of delivery but shall not be responsible for errors, omissions or other defects in any Product arising from the use of the Input Material or any infringement or alleged infringement of any rights of any third party arising as a result thereof or CC's use thereof. All other guarantees, warranties and assurances, whether express or implied are hereby excluded to the fullest extent permitted by law.

12.2 Unless the Customer notifies CC in writing within 7 days of delivery of the Products that there is a shortage of, damage to or defect in the Products, the Customer will be deemed to have accepted the Products.

12.3 CC's aggregate liability in respect of any occurrence or series of occurrences to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the price of the Products supplied in pursuance of the Order from which such liability arises. The Customer may by written notice to CC request CC to agree a higher limit of liability provided insurance cover can be obtained therefor. The premiums in respect of insurance up to such higher limit will be for the account of the Customer.

12.4 CC shall not be liable for any indirect or consequential loss, claims, damages or liabilities or loss of profit even if advised of the possibility of same.

13. Promotional Materials

Any promotional material given to the Customer on a free of charge basis remain the property of CC and shall be returned to CC by the Customer at the Customer's expense on demand.

14. Health and Safety

The Customer shall use its best endeavours to ensure that any Products supplied by CC and subsequently supplied onwards by the Customer shall be accompanied with the relevant information, instructions or advice which CC may make available with or in connection with the Products.

15. Force Majeure

15.1 None of the parties to any Contract shall be responsible to any other party for any delay in delivery of the Products or fulfilling the Contract due to Force Majeure, but the one affected party shall promptly, upon the occurrence of any such causes, inform the other parties in writing stating

that such cause has delayed or prevented its performance hereunder and thereafter such party shall take all action within its power to comply with the terms of the Contract as fully and promptly as possible.

15.2 If such circumstances continue for a continuous period in excess of 90 days, the parties shall be entitled but not obliged to terminate the Contract upon prior written notice.

16. Cancellation

16.1 No Contract may be cancelled without the prior consent in writing of CC. Where consent to cancellation is given it is an express condition thereof that CC shall be reimbursed forthwith on demand for all materials and labour costs and liabilities incurred by it for the purposes of such Contract prior to such cancellation together with a reasonable addition thereto in respect of loss or profit.

16.2 In the event of cancellation of a Contract, in addition to the reimbursement by the Customer of all costs incurred by CC in respect of such Contract prior to such cancellation, CC shall be entitled to charge a cancellation fee of 25% of the value of the Contract.

17. Customer's Indemnity

The Customer shall indemnify CC on demand against all costs, claims, damages and expenses arising directly or indirectly out of the Customer's breach of any provision of these Terms and Conditions.

18. Termination

Without prejudice to any other rights which CC may have, CC reserves the right to suspend further deliveries of Products by notice in writing to the Customer terminating the Contract if:

(a) the Customer breaches any of these Conditions and in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

(b) the Customer shall commit any act of bankruptcy or shall suffer any execution or distress to be levied on his Products or (being a company) shall enter into liquidation (whether compulsory or voluntary, save for the purposes of and followed by reconstruction or amalgamation) or shall have a receiver or administrator appointed, or enters into a trust deed for the benefit of its creditors, becomes insolvent or compounds with its creditors or ceases to trade or takes or suffers an analogous action or proceedings under the law of any other jurisdiction.

19. Notices

19.1 Any notice required to be given by either CC or the Customer to the other shall be deemed validly served as served by:

(i) Prepaid registered letter posted to the address for the recipient given herein or such other address as may from time to time be notified in writing for this purpose; or

(ii) Personal delivery by hand; or

(iii) (if appropriate) by facsimile machine during normal business hours.

19.2 Any notice served in terms of clause 17.1 above shall be deemed to have been served:-
(a) in the case of (i) above, 48 hours after posting same; and
(b) in the case of (ii) above upon delivery; and
(c) in the case of (iii) above when sent.

20. Contact details

Any communication with CC should be directed to

Collins Clayton & Co
Oatfield House
Campbeltown
Argyll PA28 6PH
United Kingdom

Tel No: +44 (0)1586 551818
Fax No: +44 (0)1586 551855
E-mail: mail@collinsclayton.com

21. General

21.1 The Customer shall not assign, subcontract or otherwise transfer any of its rights or obligations under the Contract.

21.2 Nothing in these Conditions shall limit or restrict the ability of CC to subcontract all or any of its obligations under the Contract.

21.3 CC may at any time assign all or any of its rights and obligations under the Contract or these Terms and Conditions to any third party at its sole discretion.

21.4 No waiver by CC of any breach of these Terms and Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

21.5 If any provision of these Conditions are said by any 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.

22. Governing Law

All contracts governed by these conditions shall be subject to and interpreted in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish Courts, without prejudice to the rights of CC to seek recovery of any sum due by the Customer before any court of competent jurisdiction.