

# Milchbar Full Service Creative Agency

## 1. Milchbar TERMS & CONDITIONS.

These Terms and Conditions apply to all supplies of goods and services by Milchbar unless otherwise agreed in writing by a duly authorized representative of Milchbar.

## 2. DEFINITIONS.

Milchbar referred to as The Company. The Customer – anyone who commissions Milchbar to produce, carry out or supply a service and/or hardware and equipment.

## 3. COPYRIGHT.

Any copyright and design rights in relation to any artwork and physical materials resulting from the same which are originated by Milchbar as a result of an order from the customer, (including where the customer's own artwork or materials have been incorporated into the artwork, design or physical materials so originated) shall belong to Milchbar and the customer shall only be entitled to reproduce or authorize any other person to reproduce such designs or artwork whether in whole or in part with Milchbar's authorization once the price for the same has been paid by the customer or a request is made in writing and agreed to by Milchbar.

## 4. CUSTOMER'S OWN MATERIALS.

Milchbar reserves the right to reject any unsuitable materials (including without limitation any paper, plates, computer disks or CD-ROM's) supplied or specified by the customer and to make additional charges where additional costs are incurred as a result of such materials proving unsuitable during production. Customer's artwork or other materials supplied to Milchbar remain at the customer's risk and Milchbar accepts no liability for damage, destruction or loss thereof. Milchbar shall have a lien over any materials supplied to it by the customer against payment of all monies due to it by the customer from time to time and shall be entitled (if any sum is not paid on the due date) to dispose of such property or such sums (if any) as Milchbar shall in its discretion think appropriate towards settlement of the sums due.

## 5. INDEMNITY.

The customer warrants that he has full authority to reproduce any material in which copyright subsists and Milchbar reserves the right to refuse to undertake any work which infringes or appears to infringe the copyright or other intellectual property rights of any third party or which in its opinion contains any material which is in any way unlawful. The customer warrants that any design or other material furnished by him or any design material created by Milchbar pursuant to the customer's instructions is not defamatory or obscene or such as will cause Milchbar to infringe any intellectual property rights of any third party or any legislation for the time being in force in the Netherlands in the performance of the contract. The customer shall fully indemnify Milchbar in respect of all costs, claims, liabilities and expenses (including any amount paid in settlement on legal advice and Milchbar's own legal costs) arising from any claim that any materials provided by the customer or design materials produced by Milchbar pursuant to the customer's instructions contains any defamatory or obscene matter or infringes the intellectual property rights of any third party. In the event of any claim being made or action brought against a customer arising out of the matters referred to in this clause, the customer shall promptly notify Milchbar thereof.

## 6. PRICE VARIATIONS.

Prices are based on current costs of production and any quotation is subject to increase at any time after acceptance by Milchbar of the customer's order to meet any rise or fall in such costs which are due to factors beyond Milchbar's control or due to any changes requested (including any changes in the timetable for production) or delays occasioned by the customer or failure of the customer to give adequate instructions. Unless otherwise stated all prices quoted are exclusive of VAT (or BTW [NL], or MwSt. [DE]) and any delivery or expedition charges for which the customer shall be additionally liable.

## 7. QUOTATIONS.

Milchbar will not be bound by any price quoted on the telephone. A firm quotation in writing will be given only after Milchbar has received full and complete instructions and examined the necessary samples and shall remain valid for a period of 14 days and no order shall be deemed accepted by Milchbar unless and until confirmed in writing. Where a quotation has not been given the price charged will (subject to Clause 2) be at the rate current at the date of acceptance of the order by Milchbar. No order which has been accepted may be cancelled without written consent of Milchbar and in terms that the customer will indemnify Milchbar in full against all costs incurred by it as a result of cancellation. All work undertaken at the customer's request including work of a preliminary nature will be charged to the customer.

## 8. PROOFS AND ERRORS LIABILITY.

Subject to Clause 12, Milchbar shall not be liable for any indirect or consequential loss for any loss to the customer arising from third party claims occasioned by any error, failure or delay in completing the order or by delay in delivery and in this connection time shall not be of the essence. Where work is defective for any reason, Milchbar's liability (if any) shall be limited to rectifying such defects which are seen to be caused by Milchbar and have been notified to Milchbar in writing within (72 hours) of delivery and in any event only so far as Milchbar is reasonably able to do so.

## 9. DELIVERY, PAYMENT AND RISK.

(A) Delivery shall be made by the customer collecting the order from Milchbar at any time after being notified it has been completed or if some other place for delivery is agreed by delivery of the order to that place. Time for delivery shall not be of the essence unless prior agreement is made to Milchbar and is within reason;

(B) Milchbar shall be entitled to invoice the customer for the price of the order once notification of completion has been given and payment shall become due immediately. Milchbar shall be entitled to recover the price notwithstanding delivery may not have taken place and legal title has not passed to the customer except in the case of approved credit account customers with whom alternative arrangements have been agreed in writing. Time of payment shall be of the essence of contract in this respect.

(C) Where the order is to be delivered in installments each delivery shall constitute a separate contract.

(D) In the event of the processing of the customer's order being suspended or delayed as a result of any act or omission on the part of the customer for a period in excess of thirty days Milchbar shall be entitled to immediate payment for that part of the customer's order which has been processed.

(E) If the customer fails to make any payment on the due date then without prejudice to any other right or remedy available to Milchbar, Milchbar shall be entitled to:

(i) cancel the contract or suspend any performance of the customer's order;

(ii) appropriate any payment made by the customer as Milchbar may think fit (notwithstanding any purported appropriation by the customer) and to charge the customer with all costs and expenses involved in collecting the overdue payment together with interest (both before and after any judgement) on the amount unpaid at the rate of 3% per month from the due date until payment in full is made (part of a month being treated as a full month for the purpose of calculating interest).

(F) Legal title in the work the subject of this contract shall not pass to the customer until Milchbar receives payment in full of all sums whether in respect of the work or otherwise due owing or incurred including VAT. Until legal title passes the customer shall be bailee of the goods for Milchbar but the risk in the goods shall be borne by the customer from the date of delivery or where stored in accordance with Clause 10. The customer shall ensure that he has appropriate insurance in this connection.

## 10. STORAGE.

If for any reason the customer fails to take delivery of goods at the time when the goods are ready Milchbar shall be under no obligation to store the same. Milchbar may however at its discretion if its storage facilities permit store the goods until actual delivery but at the customer's risk and the customer shall be liable to Milchbar for the reasonable costs (including insurance) of it so doing.

## 11. HARDWARE AND SUPPLIES.

All prices quoted are exclusive of carriage and BTW/VAT/MwSt (unless otherwise stated.) Certain products have minimum system or configuration requirements. We suggest if you are unsure of what these are, that you contact us, or the manufacturer, prior to purchase, since we do not take back, for refund or exchange, any opened items that are suitable for the purpose intended. Unless we are specifically asked about requirements or compatibility, we shall assume the customer is aware of what these are. If we have to part ship an order, due to a temporary stock shortage, carriage is only charged on the first consignment -subsequent part shipments will not carry a delivery charge. We will always try to let you know if an item is out of stock when you place your order. If, however, you order new release items, we shall hold the order until all items are in stock, unless you agree to pay a shipping charge per item sent. Prices and promotional offers are subject to change without notice. Personal and business cheques are welcome, but will need to be cleared before the goods are shipped. This takes 8 working days from when we receive the cheque. Postal orders are acceptable and are cleared immediately. You may also transfer funds directly into our bank account, in which case goods can be shipped straight away. Education and Government orders are acceptable subject to the institution's acceptance of our trading terms and conditions. Unless otherwise expressly stipulated by the Company, credit account invoices are due and payable in full 30 days after the invoice date. If an invoice becomes overdue, we reserve the right to charge interest on overdue amounts at 3% per month from the time the amount becomes overdue, until the invoice is paid in full. No property or title to goods shall pass from the Company to the Customer until the full amount of the value of the goods has been credited to the Company's bank account, however, the customer is responsible for the goods from the time of delivery and liability to insure the goods then rests with the customer. The Company reserves the right to not accept cancellation of orders or the return of unwanted goods, however, at the Company's discretion, it may be prepared to accept cancellations or returns subject to the payment of a restocking fee of 5% (minimum amount 25 Euro) and that the returned items are in a fully marketable condition. Cancellations must be made in writing after having called us, in advance. All products (including special offers, upgrades, and promotions) are subject to availability and we do not guarantee to fulfill orders at the prices stated. All products are covered by manufacturer's warranty (with the exception of refurbished/second hand equipment supplied by Milchbar). All shipments in transit from Milchbar are covered by carrier's standard insurance, increased insurance cover can be applied for at the carrier's standard rates. The Customer's signature will be required at time of receipt and goods cannot be left without such signature. Claims for non-delivery, missing items or damage to goods in transit must be made within 3 working days of expected delivery. Claims will not be accepted after this time. Milchbar can accept no liability for performance or late delivery of goods supplied. In any event, liability shall not be greater than the value of the goods supplied. All illustrations and product descriptions featured are for guidance only. Actual packaging and product design may vary from those shown. We are not responsible for typographical errors.

## 12. CONSUMER RIGHTS.

These terms and conditions do not and will not affect the statutory rights of a customer who is a consumer.

## 13. WAIVER.

Failure by Milchbar to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at time or times thereafter.

## 14. ILLEGALITY AND SEVERANCE.

If any provision hereof is held by any competent authority to be invalid or unenforceable in whole or in part the validity of all other provisions and the remainder of the provision in question shall not be affected thereby.

## 15. ENTIRE AGREEMENT.

These provisions constitute the entire agreement between Milchbar and the customer and replace all prior agreements, understandings, statements and communications between Milchbar and the customer.

## 16. FORCE MAJEURE.

Milchbar will make every effort to carry out the customer's instructions and the resulting contract but shall be under no liability if unable to carry out any provision of the contract for any reason beyond Milchbar's control (without limiting the foregoing) including the inability to secure labour, materials or supplies, breakdown of machinery, or as a result of the Act of God, war, labour dispute, fire, flood, drought, legislation, failure of power supply or any cause beyond Milchbar's control. During the continuance of such contingency the customer may by notice in writing to Milchbar elect to terminate the contract and pay for work done up to such notice for materials used but subject thereto shall otherwise accept delivery when available.

## 17. GOVERNING LAW.

These conditions and all other terms of the contract shall be governed by and construed in accordance with the laws of the country where Milchbar has its principal place of business. All correspondence to be made in writing to Milchbar.

*Milchbar, Dr J van Damstraat 55, 7523 XM Enschede, Netherlands*