

Paper Rose Limited
Terms and Conditions of Sale

1 Interpretation

Business Day: a day except Saturday, Sunday or public holiday.

Contract: the contract between you and us for the sale of Goods in accordance with these Terms.

Goods: cards, gift wrap, bags, accessories, gifts and other goods detailed in an Order.

Order: the order placed with us in writing, whether sent online, via email or otherwise or as placed via phone.

Terms: these terms and conditions amended from time to time.

We/Us/Our: Paper Rose Limited registered in England at Riverside House, Centurion Way, Nottingham, NG2 1RW (No. 1992961).

Website means www.paperrose.co.uk and www.artgroupcards.co.uk which we operate.

You/Your/Customer means the person, company or firm buying Goods from us.

1.1 **Person** includes a natural person, corporate or unincorporated body.

1.2 A phrase introduced by **including, include, in particular** or similar is illustrative and shall not limit the sense of the preceding words.

1.3 Reference to **writing** or **written** includes fax and e-mail.

2 Account opening

2.1 To order Goods, you must open an account by completing our account application form in hard copy or online. You must provide all relevant, accurate details including two trade referees. You are responsible for any individual submitting details on your behalf.

2.2 By making the form available, we invite you to apply for an account but are not obliged to accept any Customer. Acceptance is entirely at our discretion and subject to checks.

2.3 If we accept your application, we will confirm that your account is open and issue an account number which you must use each time you place Orders.

2.4 We will consult third parties as necessary, for trade and credit references and record that information. Such information may be available to other businesses for continuous risk assessment.

2.5 We may close or suspend an account if we reasonably believe there is material deterioration in your creditworthiness.

2.6 We may stipulate conditions for your account as we determine including credit limits or payment terms and may vary them at any time. By placing any Order, you agree to such stipulated conditions which will be incorporated into each Contract and these Terms will be varied accordingly.

2.7 Granting of trade credit and account opening is at our discretion.

3 Placing Orders and basis of Contract

3.1 These Terms apply to all Contracts to the exclusion of any terms that you seek to impose or are implied by practice or course of dealing. They apply to all Orders whether offline (including telephone) or on our Website.

3.2 Orders can be made via re-order tickets, Website, email, fax, EDI or phone. We reserve the right to require telephone orders to be confirmed in writing.

3.3 An Order is an offer by you to buy Goods in accordance with these Terms. It is only deemed accepted on delivery of the Goods. We are not obliged to accept Orders, including if stock is not available or if we doubt your creditworthiness.

3.4 You must ensure Orders are complete and accurate.

3.5 The Contract comprises these Terms (including account specific conditions) and the Order accepted by us and is the entire agreement between us. You confirm that you have not relied on any promise, representation or warranty given by us or on our behalf which is not in the Contract.

3.6 Quotations from us are not an offer. Prices quoted via the Website, by a representative or otherwise may vary before an Order is accepted. We do not make quoted prices available for any particular period.

3.7 To place Orders online, you need a username and password which you must keep secure. Our Website terms of use also apply if you place Orders or open an account on the Website and form part of these Terms.

4 Goods and stock

4.1 Goods are described on our Website. Samples, photos, descriptions and illustrations give an indication of Goods only but are not part of the Contract.

4.2 We may vary available ranges and nothing obliges us to continue a particular range.

4.3 Any indication of stock level may not be accurate and we shall not be liable for any delays due to lack of availability.

4.4 All intellectual property rights (including all trademarks, logos, designs and look and feel) in the Goods belong to us and nothing transfers any such rights to you. You shall not under any circumstances, copy or allow any person to copy our intellectual property rights.

4.5 We may provide display units for your use. Those units belong to us and you should take care of them, keep them clean and in good condition. We may remove any display units provided by us if they are not exclusively being used for the display of our product and you shall provide us with access to your premises for such purpose.

5 **Delivery**

5.1 We will deliver Goods to the delivery address on the account opening form or set out in the agreed store list spreadsheet (**Delivery Location**). You may vary Delivery Location by written notice but we cannot change Delivery Address once Goods are dispatched.

5.2 Delivery is by parcel carrier or post. If other means are used, additional charges apply.

5.3 Delivery dates are approximate only and time of delivery is not of the essence. We shall not be liable for any failure in delivery of the Goods that is caused by a Force Majeure Event or your failure to provide adequate delivery or other instructions.

5.4 Delivery is completed on the Goods' arrival at Delivery Location for UK Mainland delivery. Delivery for all export sales is ex works Nottingham. If you fail to accept delivery, we may store Goods until you take delivery and charge you for all related costs and expenses. If you do not take delivery within 10 Business Days of being told that the Goods are available, we may resell them.

5.5 We may deliver Goods by instalments which shall be invoiced and paid for separately. Each instalment is a separate Contract. Delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

5.6 If we fail to deliver Goods, our liability is limited to the cost of the Goods only.

6 **Warranty, replacement and refund**

6.1 We warrant that on delivery, Goods shall be: free from material defect in material and workmanship; and of satisfactory quality and fit for their intended purpose. You shall inspect Goods on delivery and inform us as soon as possible (and in any event within seven days) of any damage, shortage or error. Provided we are given a reasonable period to inspect Goods and where we find damage, shortage or error, we shall replace the Goods and we may collect the Goods being replaced. This is the only available remedy as a result of Goods' failure to comply with this warranty and all other implied terms are excluded to the fullest extent permitted by law.

6.2 These Terms apply equally to replacement Goods.

7 **Title and Risk**

7.1 Risk in the Goods shall pass to you on delivery.

7.2 Title to the Goods shall not pass to you until the earlier of:

- 7.2.1 our receipt of payment in full (in cash or cleared funds) for the Goods and any other goods that we have supplied to you, in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 7.2.2 you reselling the Goods, in which case title to the Goods shall pass to you as specified in clause 7.4.
- 7.3 Until title to the Goods passes to you, you shall:
- 7.3.1 not remove or obscure any identifying mark or packaging on the Goods and keep them readily identifiable as our property;
 - 7.3.2 keep the Goods in satisfactory condition and insured against all risks for their full price from the delivery date;
 - 7.3.3 notify us immediately if you become subject to any of the events listed in clause 9.1; and
 - 7.3.4 give us such information about the Goods as we require from time to time.
- 7.4 You may resell or use the Goods in the ordinary course of business (but not otherwise) before we receive payment but if you resell the Goods before that time:
- 7.4.1 you do so as principal and not as our agent; and
 - 7.4.2 title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.
- 7.5 If before title to Goods passes, you become subject to any event in clause 9.1, without limiting our other rights or remedies:
- 7.5.1 your right to resell the Goods or use them in the ordinary course of business ceases immediately; and
 - 7.5.2 we may require you to deliver up all Goods in your possession which have not been resold and if you fail to do so promptly, enter your premises or those of any third party where the Goods are stored, to recover them.

8 **Price and Payment**

- 8.1 Prices for the Goods are our published list prices or such other prices as we may agree in writing.
- 8.2 Prices include costs and charges for packaging, insurance and transport unless otherwise stated. The following charges shall also apply:
 - 8.2.1 5 pence per card for all Goods wrapped on request;
 - 8.2.2 delivery charge of £5 will apply on all Orders under £150 excluding VAT or under 20 tickets on planned display;

- 8.2.3 restocking charge of 20% of credit value for any seasonal returns.
- 8.3 All prices exclude VAT which you shall pay in addition.
- 8.4 We invoice Goods on the day after dispatch.
- 8.5 You shall pay in full and cleared funds by the end of the month following the date of invoice except that we may insist on immediate payment, notwithstanding a prior agreement to provide credit, but only if we have good reason to doubt your ability to pay. All seasonal invoices are due for payment at the end of the calendar month that the relevant season falls within. Except with our prior written consent, payment shall not be withheld for anticipated seasonal credit notes, which are to be deducted from future remittances.
- 8.6 Payment shall be made to the bank account nominated in writing by us, by cheque or by credit card. Time of payment is of the essence.
- 8.7 If any invoice is not paid when due, we may demand immediate payment of all outstanding invoices and you shall pay interest on the overdue amount at a rate of 8% per annum above Bank of England base rate from time to time, accruing daily from the due date until actual payment of the overdue amount, whether before or after judgment. You shall also pay all costs and charges incurred by us in recovering overdue amounts including third party costs and bank charges.
- 8.8 You shall pay all amounts in full without set-off, counterclaim or withholding (except required by law). We may without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.
- 8.9 We aim to ensure that prices are accurate but if there are pricing errors on our Website or elsewhere, we will tell you and give you the option of continuing or cancelling. If we cannot contact you, we may treat the Order as cancelled. If a price error is obvious and could reasonably have been recognised by you as mispricing, we are not obliged to provide Goods at the incorrect (lower) price.

9 **Termination and Suspension**

- 9.1 If you become subject to any of the following, we may terminate the Contract, and/or suspend or close your account, on written notice:
- 9.1.1 you suspend or threaten to suspend payment of your debts, are unable to pay your debts as they fall due or admit inability to pay your debts, or are deemed unable to pay your debts within the meaning of s.123 of the Insolvency Act 1986 or are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or have any partner to whom any of the foregoing apply;

- 9.1.2 you commence negotiations with all or any class of creditors with a view to rescheduling any debts or make a proposal for or enter into any compromise or arrangement with your creditors;
 - 9.1.3 a petition is filed, notice given, resolution passed or order made, for or in connection with your winding up, (other than for solvent amalgamation or reconstruction);
 - 9.1.4 an application is made to court, an order made for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over you;
 - 9.1.5 the holder of a qualifying floating charge over your assets becomes entitled to appoint or has appointed an administrative receiver or a person becomes entitled to appoint or a receiver is appointed over your assets;
 - 9.1.6 you are the subject of a bankruptcy petition or order;
 - 9.1.7 a creditor or encumbrancer attaches or takes possession of or a distress, execution, sequestration or other process is levied or enforced on or sued against the whole or any part of your assets and the same is not discharged within 14 days;
 - 9.1.8 any event occurs or proceeding taken in any jurisdiction to which you are subject, equivalent or similar to any of the events above;
 - 9.1.9 you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;
 - 9.1.10 your financial position deteriorates to such an extent that in our opinion, your capability to adequately fulfil your obligations under the Contract is in jeopardy;
 - 9.1.11 you die or due to illness or incapacity are incapable of managing your own affairs or become a patient under mental health legislation.
- 9.2 Without limiting other rights or remedies, we may suspend delivery under the Contract or any other contract and suspend or close your account if you becomes subject to any event in clause 9.1 or we reasonably believe you are about to be or you fail to pay an amount when due.
- 9.3 On termination of the Contract, you shall immediately pay all unpaid invoices and interest.
- 9.4 Termination of the Contract shall not affect our respective rights, remedies, obligations and liabilities accrued as at termination and clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 10 Limitation of Liability**
- 10.1 Nothing in the Contract shall limit or exclude our liability for:

- 10.1.1 death or personal injury caused by our negligence or that of our employees, agents or contractors;
 - 10.1.2 fraud or fraudulent misrepresentation;
 - 10.1.3 breach of terms implied by section 12 of the Sale of Goods Act 1979 or for defective products under the Consumer Protection Act 1987; or
 - 10.1.4 any matter for which it would be unlawful for us to exclude or restrict liability.
- 10.2 Subject to clause 10.1 in no event shall we be liable in contract, tort, statute or otherwise for any costs, claims, damages, liabilities or expenses in respect of:
- 10.2.1 any direct loss of profit; or
 - 10.2.2 any direct loss of anticipated savings; or
 - 10.2.3 any indirect loss or damage however caused including:
 - 10.2.3.1 any indirect loss of profit or loss of anticipated profit including lost profits on sales; or
 - 10.2.3.2 any indirect loss of anticipated savings; or
 - 10.2.3.3 loss of use of money; or
 - 10.2.3.4 loss of opportunity or business; or
 - 10.2.3.5 loss of revenue or contracts; or
 - 10.2.3.6 loss of goodwill; or
 - 10.2.3.7 any other special, indirect or consequential loss whether caused by negligence, breach of contract or out of or in connection with the Goods or their use or otherwise;

and the parties agree that categories of loss in this clause 10 are distinct and severable.

- 10.3 Without prejudice to clause 10.1 and 10.2, our maximum aggregate liability for all claims made by you in relation to each Contract shall not exceed Contract value however that claim arises including negligence, tort, breach of contract or breach of statutory duty.

11 **Force Majeure**

Neither party shall be liable for any failure or delay in performing its obligations if caused by Force Majeure. **Force Majeure** means an event beyond a party's reasonable control including strike, industrial dispute, transport network failure, act of God, war, terrorism, riot, malicious damage, breakdown of plant or machinery, explosion, collapse of building, fire, flood, storm, natural disaster, extreme adverse weather or default of contractors.

12 **General**

- 12.1 We may at any time assign, transfer, charge, subcontract or deal in any manner with all or any of our rights or obligations under the Contract.
- 12.2 You may not assign, transfer, charge, subcontract or deal in any other manner with any or all of your rights or obligations under the Contract without our prior written consent.
- 12.3 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified in writing and shall be delivered personally, sent by pre-paid first class post or other next working day service or fax. Notices shall be deemed received if: delivered personally, when left at the relevant address; sent by pre-paid first class post or similar, at 9.00 am on the next Business Day after posting; by fax on successful transmission receipt.
- 12.4 Nothing in the Contract creates or is deemed to create a partnership or relationship of principal/agent or employer/employee between the parties.
- 12.5 If any provision is held by any Court or other competent authority to be void or unenforceable in full or in part, all remaining clauses shall continue to be valid.
- 12.6 Failure by either party to exercise or enforce any right shall not be a waiver of that right nor prevent the exercise or enforcement of that or any other right at any time and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.7 Except as expressly set out herein, a person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce them. Any remedy which exists or is available apart from the Act is not affected
- 12.8 No Contract variation including the introduction of any additional terms and conditions shall be effective unless in writing and signed by us.
- 12.9 The Contract is deemed made in England and its construction, validity and performance shall be covered in all respects by English Law and the parties submit to the exclusive jurisdiction of the English Courts except with regard to enforcement in which case jurisdiction of the English Courts shall be non-exclusive.