

STANDARD CONDITIONS OF CONTRACT (FEBRUARY 2005)

1 DEFINITIONS

In these Conditions:

- 1.1 "Seller" means the party providing the goods or services under these Conditions.
- 1.2 "Buyer" means the party contracting with the Seller to acquire the goods and services supplied under these Conditions
- 1.3 "Work" means all goods (by way of intermediate or finished product) and services to be supplied by the Seller to the Buyer
- 1.4 "Intermediates" means all products produced during the manufacturing process including non-exhaustively discs, film, plate, intellectual property
- 1.5 "Preliminary Work" means all work done in the concept and preparatory stages (including non-exhaustively design, art work, colour matching)
- 1.6 "Electronic File" means any text, illustration or other matter supplied or produced by either Party in digitised form on disc, through a modem, or by ISDN or any other communication link
- 1.7 "Periodical Publications" means publications produced at (normally regular) intervals
- 1.8 "Insolvency" means the Buyer's status when the Buyer is in a position where it is unable to pay its debts or has a winding up petition issued against it or has a receiver, administrator or administrative receiver appointed to it or being an individual commits an act of bankruptcy or has a bankruptcy petition issued against him
- 1.9 "Contract" means an agreement for the sale and purchase of Work
- 1.10 "Writing" includes electronic mail and facsimile transmission

2 BASIS OF THE SALE

- 2.1 The Seller's estimates are only invitations for the Buyer to issue an order and are given subject to inspection by the Seller and the Seller's satisfaction with final copy, instructions, artwork, photographs, transparencies and electronic files.
- 2.2 The Seller shall sell and the Buyer shall purchase the Work in accordance with any Written order of the Buyer which is accepted in Writing by the Seller's authorised representative, subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made, by the Buyer. The Seller may decline any order made by a buyer and may withdraw any estimate
- 2.3 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Work unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed
- 2.5 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Work within a sufficient time to enable the Seller to perform the Contract in accordance with its terms
- 2.6 If the Work is to be manufactured or any process is to be applied to the Work by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification
- 2.7 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by the Seller as a result of cancellation

3 PRICE

- 3.1 Prices are based on the Seller's current costs of production and, unless otherwise agreed in Writing, are subject to amendment to meet any rise or fall in such costs that have taken place by the time of delivery. Estimates are given exclusive of tax and the Seller reserves the right to charge and the buyer will pay any VAT or other tax payable. All Work carried out shall be charged. This includes all Preliminary Work whether or not the Buyer agrees to that work being taken forward to production. Prices include delivery ex works the Seller and unless expressly agreed otherwise in Writing all delivery elsewhere (if agreed by the Seller) shall be charged extra. Delivery outside of normal business hours or involving difficult access and/or unreasonable distance from vehicular access shall entitle the Seller to make an extra charge to reflect its extra costs. Should expedited delivery be agreed the Seller shall be entitled to make an extra charge to cover any overtime or any other additional costs
- 3.2 Any additional Work required of the Seller by reason of the Buyer supplying inadequate copy, incomplete or incorrect instructions or insufficient materials or late delivery of the same shall be charged. The Buyer will be charged for all pallets not returned to the Seller within the period stated in the Contract (and if no period is stated then within one calendar month from the time of delivery)
- 3.3 Every endeavour will be made to deliver the correct quantity ordered, but prices are conditioned upon margins of five per cent (5%) of Work being allowed for over or under the same to be charged or deducted, unless otherwise agreed in Writing
- 3.4 Should the Work or its delivery be suspended or delayed by the Buyer for any reason the Seller shall be entitled to charge for Work already carried out, materials specially ordered or allocated to the Work and any other additional costs including compensation for storage of the Buyer's materials or Work and for loss of or wastage of resources that cannot otherwise be used

4 PAYMENT

- 4.1 Subject to Condition 4.2 payment shall become due before delivery for the Work and the Seller, at his absolute discretion, may ask for part or full payment in advance of starting the Work
- 4.2 Credit facilities may be granted to applicants who complete the Seller's Credit Account Application Form and who satisfy the Supplier's criteria as set out from time to time. Where facilities are granted the Seller reserves the right to withdraw them at any time, without having to give their reasons and, in such a case, all outstanding invoices become due and payable immediately
- 4.3 Without prejudice to any other rights of the Company, if the Customer fails to pay the amount due by the due date, interest shall be added to such amount at the daily rate of 8% over the base rate quoted by Barclays Bank plc for the period from and including the date of receipt (whether before or after judgment). The Company reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall also reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount

5 DELIVERY

- 5.1 Delivery of the Work shall be accepted when tendered. Unless otherwise agreed in Writing completion and delivery times are a guide only and, whilst the Seller will make every effort to adhere to proposed timescales, time is not of the essence in any contract with the Buyer
- 5.2 Where the Work is to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated
- 5.3 If the Seller fails to deliver the Work for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods or services to replace those not delivered over the price of the Work
- 5.4 If the Buyer fails to take delivery of the Work (which expression shall for the purposes only of this clause 5.4 include the Buyer's property referred to in clause 6) or fails to give the Seller adequate delivery instructions at the time stated for the delivery (otherwise than by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 5.4.1 store the Work until actual delivery ad charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 5.4.2 sell the Work at the best price readily obtainable and (after deducting all reasonable storage insurance and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract

6 MATERIALS SUPPLIED OR SPECIFIED BY THE BUYER

6.1 Electronic Files

It is the Buyer's responsibility to maintain a copy of any original Electronic File provided by the Buyer. The Seller shall not be responsible for checking the accuracy of supplied input from an Electronic File unless otherwise agreed in Writing. Without prejudice to clause 6.2.2, if an Electronic File is not suitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action the Seller may make a charge for any resulting additional cost incurred or may reject the file without prejudice to his rights to payment for work done/material purchased

6.2 Other Materials

- 6.2.1 Metal, film and other materials owned by the Buyer and supplied to the Seller for the production of type, plates, filmetting, negatives, positives, electronic files and the like shall remain the Buyer's exclusive property. However where the content is generated by the Seller, the Seller may, in order to protect his intellectual property rights and at his absolute discretion, replace such material with unused material of a similar or better quality
- 6.2.2 The Seller may reject any film, discs, paper, plates, electronic files, inserts or other materials supplied or specified by the Buyer which appear to him to be unsuitable for the purpose intended. Additional cost incurred if materials are found unsuitable during production may be charged
- 6.2.3 Without prejudice to clause 6.2.2, where materials are so supplied or specified, and the Seller so advises the Buyer, and the Buyer instructs the Seller in writing to proceed anyway, the Seller will use reasonable endeavours to secure the best results, but shall have no liability for the quality of the end-product(s)
- 6.2.4 Quantities of materials supplied by the Buyer shall be adequate to cover normal spoilage. Any costs incurred as a result of shortages, including re-starting jobs, duplicating masters etc will be charged in addition to the estimated price. Any overages of such materials shall become the property of the Seller at no cost

7 MATERIALS AND EQUIPMENT SUPPLIED BY THE SELLER

Metal, film and other materials owned by the Seller and used in the production of intermediates, type, plates, filmetting, negatives, positives, electronic files and other production processes, together with items thereby produced, shall remain the Seller's exclusive property. Type shall be distributed and film and plates, tapes, discs, electronic files or other work destroyed immediately after the order is executed unless written arrangements are made to the contrary. In the latter event, storage shall be charged. The Seller shall not be obliged to download any digital data from his equipment or supply the same to the Buyer on disc, tape or by any communication link.

8 RISK AND INSURANCE

- 8.1 Notwithstanding that the property in the Work does not pass to the Buyer until payment thereof is made to the Seller in full, the Work and other property of or supplied by or on behalf of the Buyer whatsoever in the Seller's possession shall be held, worked on and carried at the Buyer's risk in every respect. Any Work sent by the Seller by post or at the direction of the Buyer shall be sent at the risk of the Buyer
- 8.2 Where the Seller agrees to deliver the Work elsewhere than at the Seller's premises (whether or not the cost of delivery is included in the price or is in addition to the price) the risk of any loss or damage to or deterioration of the Work from whatever cause shall be borne by the Buyer (unless this risk had already passed to the Buyer under the previous conditions) and the Work shall be at the risk of the Buyer in all respects from the time that the Work leaves the premises of the Seller or any sub-contractor of the Seller as the case may be notwithstanding that under the previous conditions the same would not be at risk of the Buyer until some later time
- 8.3 The Buyer shall effect all such insurance as it shall consider necessary to protect its interests in any Work or property which under these Conditions are stated to be at the risk of the Buyer

9 RETENTION OF TITLE

- 9.1 Until the purchase price of the Work or other goods comprised in this or any other contract between the Seller and the Buyer and all other sums whatsoever which are or shall become outstanding from the Buyer to the Seller shall have been paid or satisfied in full (and if by cheque, then only upon clearance):
 - 9.1.1 The property in the Work shall remain vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein)
 - 9.1.2 The Buyer shall store the Work in such a way that it can be readily identified as being the Seller's property
 - 9.1.3 The Buyer shall on request inform the Seller of the precise location of each item of the Work
 - 9.1.4 In the event of the Buyer's Insolvency or if the Buyer fails to make any payment to the Seller on its due date the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing any Work in the Buyer's possession and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession

10 PROOFS AND VARIATIONS

The Seller shall incur no liability for any errors not corrected by the Buyer where the Buyer has been provided with proofs. The Buyer's alterations and additional proofs necessitated thereby shall be charged extra. When style, type or layout is left to the Seller's judgement, changes therefrom made by the Buyer shall be charged extra. Where the Buyer specifically waives any requirement to examine proofs the Seller is indemnified by the Buyer against any and all errors in the finished Work. Due to differences in equipment, paper, inks and other conditions between colour proofing and production runs, a reasonable variation in colour between colour proofs and the completed job will be deemed acceptable unless otherwise agreed in Writing

11 CLAIMS AND LIABILITY

11.1 Claims

- 11.1.1 Notice of claims in respect of Work apparently damaged or lost in transit must be given in Writing to the Seller and the carrier within three clear days of delivery and in the case of non-delivery, within 3 days of notification of despatch of the Work. All other claims must be made in Writing to the Seller as soon as practicable and in any event in the case of defects apparent upon inspection within 14 days of delivery. The Seller shall not be liable in respect of any claim unless the aforementioned requirements have been complied with
- 11.1.2 If the Work is defective so that the Buyer may in law reject it, said rejection must take place within 14 (fourteen) days of delivery of the Work, failing which the Buyer will be deemed to have accepted the Work
- 11.1.3 The event of all or any claims or rejections the Seller reserves the right to inspect the Work within seven days of the claim or rejection being notified

11.2 Liability

- 11.2.1 Where Work is defective for any reason, including negligence, the Seller's liability (if any) shall be limited insofar as is permitted by law at the Seller's discretion to rectifying such defect, or crediting its value against any invoice raised in respect of the Work or replacing the defective Work provided that:
 - a) to the extent that it is practicable defective Work must be returned to the Seller before replacement or rectification or credits can be issued. If the subject Work is not available to the Seller the Seller will hold that the Buyer has accepted the Work and no credits, rectification or replacement Work will be provided; and
 - b) where the Seller offers to replace defective Work the Buyer must accept such an offer unless he can show clear cause for refusal so to do. If the Buyer unreasonably opts to have the work re-done by any third party the Buyer automatically revokes his right to any remedy from the Seller, including but not exclusively the right to a credit in respect of Work done by the Seller
- 11.2.2 The Seller shall not be liable for indirect loss, consequential loss or third party claims occasioned by defective Work and the Buyer shall not be entitled to any further claim in respect of the Work nor shall the Buyer be entitled to repudiate the contract, refuse to pay for the Work or cancel further deliveries
- 11.2.3 The Seller shall not be liable for indirect loss, consequential loss or third party claims occasioned by delay in completing the Work or for any loss to the Buyer arising from delay in transit, whether as a result of the Seller's negligence or otherwise
- 11.2.4 Where the Work will be forwarded by or on behalf of the Buyer to a third party for further processing the Buyer will be deemed to have inspected and approved the Work prior to forwarding and the Seller accepts no liability for claims arising subsequent to the third party's processing
- 11.2.5 The Seller reserves the right to reject any Work forwarded to him after initial processing by a third party as soon as is reasonably practicable without processing the Work any further. Should the Buyer require the Seller notwithstanding to continue, then the Seller is only obliged to do so after confirmation from the Buyer in Writing
- 11.2.6 The Seller's liability under clause 11 shall be in lieu of any warranties and conditions whether express or implied by statute common law or otherwise however, which warranties and conditions are hereby expressly excluded
- 11.2.7 Nothing in these conditions shall exclude the Seller's liability for death or personal injury as a result of its negligence

12 INSOLVENCY/BREACH

- 12.1 Without prejudice to other remedies, if the Buyer becomes subject to Insolvency, the Seller shall have the right not to proceed further with any Contract and any other work for the Buyer and shall be entitled to charge for Work already carried out (whether completed or not) and materials purchased for the Buyer, such charge to be an immediate debt due to him. Any unpaid invoices shall become immediately due for payment
- 12.2 Where the Buyer is in breach of these Conditions or performs any act of Insolvency the Seller reserves the right to approach the Buyer's customer and to offer the Work directly to them, notwithstanding the fact that this involves advising the Buyer's customer that the Buyer is in breach or in default
- 12.3 Any sums due to the Seller from the Buyer may be set off against sums payable by the Seller to the Buyer

13 GENERAL LIEN

- 13.1 Without prejudice to other remedies, in respect of all unpaid debts due from the Buyer the Seller shall have a general lien on all goods and property of or provided by the Buyer in the Seller's possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property as agent for the Buyer in such manner and at such price as he thinks fit and to apply the proceeds towards such debts, and shall when accounting to the Buyer for any balance remaining be discharged from all liability in respect of such goods or property

14 ILLEGAL MATTER

- 14.1 The Seller shall not be required to print any matter which in its opinion is or may be of an illegal or libellous nature or which might involve any infringement of any third party rights or which would otherwise involve any criminal or tortious liability of any kind
- 14.2 In the event of any complaint, claim, action, proceedings or prosecution brought or made against the Seller in respect of or arising in any way from any matter or thing appearing in or on any goods or material printed, processed or dealt with for the Buyer by the Seller whether such matter is or is alleged to be illegal, unlawful, libellous, in breach or infringement of copyright, trademark, patent, design; or any other third party right, whatsoever of any nature and whether such complaint, claim, action, or proceeding is settled, compromised or litigated in any way whether through to and/or beyond any judgement or appeal or discontinued, abandoned or struck out for want of prosecution or otherwise left or dealt in any way and as a result the Seller incurs any cost, loss, damage, liability or penalty of any kind the Buyer shall forthwith upon the Seller's first written demand indemnify the Seller in respect of such cost, loss, damage, liability or penalty, without enquiry or question and without exercising any right of set off counter claim or cross demand of any nature against the Seller

15 FORCE MAJEURE

- 15.1 The Seller shall be under no liability if he shall be unable to carry out any provision of the contract for any reason beyond his reasonable control (including (without limiting the foregoing): Act of God; legislation; war; fire; flood; drought; inadequacy or unsuitability of any instructions, electronic file or other data or materials supplied by the Buyer; failure of power supply; lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute; or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Buyer may by written notice to the Seller elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available

16 GENERAL

- 16.1 **Data Protection**
The Buyer is hereby notified that the Seller may transfer personal information about the Buyer to a Credit Agency
- 16.2 **Law**
These Conditions and all other express and implied terms of the Contract shall be governed and construed in accordance with the laws of England and the parties agree to submit to the jurisdiction of the courts of England and Wales
- 16.3 **Notices**
All specifications and notices relied on by either party and all variations of this agreement must be in Writing and include a duly authorised signature
- 16.4 **Consumers**
Nothing in these Terms shall affect the rights of consumers
- 16.5 **Severability**
All clauses and sub-clauses of this Agreement are severable and if any clause or identifiable part thereof is held to be unenforceable by any court of competent jurisdiction then such enforceability shall not affect the enforceability of the remaining provisions or identifiable parts thereof in these Terms and Conditions
- 16.6 **Assignment**
This Contract shall not be assigned by the Buyer without the consent in Writing of the Seller