

# STANDARD TERMS AND CONDITIONS OF SALE

## 1 DEFINITIONS

- 1.1 **"Customer"** means the person, firm, company or organisation buying the Goods and/or Services under and subject to these Terms and Conditions;
- 1.2 **"Contract"** means any contract for the supply of any Goods and/or Services (including any ancillary or related services) concluded between the Supplier and the Customer under and in accordance with these Terms and Conditions;
- 1.3 **"Goods"** means the product(s) of the Services and the Services (where the context so implies), together with any other goods which the Customer agrees to purchase from the Supplier;
- 1.4 **"Order"** means any order given by the Customer to the Supplier and accepted by the Supplier in writing in accordance with clause 4.4 of these Terms and Conditions;
- 1.5 **"Services"** means any print management services to be provided by the Supplier under any Contract, together with any other services which the Supplier provides, or agrees to provide, to the Customer;
- 1.6 **"Supplier"** means Access Plus Marketing Services (incorporating TPF Group) trading as Banner Managed Communication or any subsidiary of, or company in, the office2office plc group of companies; and
- 1.7 **"Terms and Conditions"** means these terms and conditions as from time to time amended by and at the discretion of the Supplier.

## 2 APPLICATION

- 2.1 These Terms and Conditions shall apply to any Order. These Terms and Conditions are the only ones on which the Supplier will provide the Goods and/or the Services to the Customer unless agreed otherwise in writing by the parties. No representative, agent or sales person of the Supplier has authority to make representations or give undertakings relating to the Goods and/or the Services which are not set out herein or otherwise agreed in writing by a duly authorised representative of the Supplier. The placing of an Order or the Customer's acceptance of any Goods and/or Services (whichever is the earlier) shall indicate unqualified acceptance of these Terms and Conditions.
- 2.2 These Terms and Conditions supersede all previous oral or written representations, undertakings or agreements between the parties relating to the Goods and/or Services specified in an Order and accepted by the Supplier. No variation or addition to these Terms and Conditions will form part of any Contract unless made or specifically accepted in writing by a duly authorised representative of the Supplier or Customer. These Terms and Conditions will override and take the place of any other terms and conditions contained in any document or other communication used by the Customer (including without limitation those set out on the Customer's order form or any other similar document). No conduct by the Supplier shall be deemed to constitute acceptance of any other terms or conditions. In the event of there being any conflict between these Terms and Conditions and any quotation or response to tender from the Supplier, the latter shall prevail.
- 2.3 Each Order or acceptance of a quotation for the Goods and/or the Services by the Customer from the Supplier shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Terms and Conditions.

## 3 QUOTATIONS

- 3.1 All quotations, estimates and responses to tenders are made subject to these Terms and Conditions and are for the whole of the Goods and/or Services to which the quotation or response to tender relates. The Supplier may refuse to accept any order for Goods and/or Services that constitute a part only of the quotation or tender. The Supplier reserves the right to correct quotations and invoices where typographical, clerical or other errors have been made.
- 3.2 Quotations, estimates and responses to tenders are valid for a period of thirty (30) days from the date of quotation, estimate or response to tender. The price is based on information available to the Supplier at the date of quotation and may be adjusted in the event of any increase in costs between that date and the date of performance. Prices are quoted ex-works and the Supplier shall be entitled to charge VAT or other tax payable at the then current rate.

## 4 ORDERS

- 4.1 Each Order and subsequent acceptance of the Order by the Supplier for the Goods and/or Services shall constitute a separate Contract entered into under these Terms and Conditions. Each Order shall be in writing and contain at least the following information: (a) a description of the Goods and/or Services to be supplied including where relevant a specification of the quality of the Goods to be supplied, or where relevant a sample; (b) the number of the Goods to be supplied; (c) the agreed price; and (d) the required delivery address and delivery date or date for performance (in the case of provision of the Services). No contract shall exist between the Supplier and the Customer where the Supplier reasonably rejects the Order. Where no written Order has been provided by the Customer and the Customer has requested that the Supplier proceeds, the terms of the quotation or estimate provided by the Supplier shall prevail.
- 4.2 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Customer and for giving the Supplier all necessary information relating to the

Goods and/or Services within a sufficient time to enable the Supplier to fulfil its obligations under the Contract.

- 4.3 The Supplier reserves the right at its sole discretion:

4.3.1 to reject any paper, plates or any other materials supplied or specified by the Customer ("Materials") which appear to the Supplier to be unsuitable for the purposes of fulfilling its obligations under the Contract or do not conform to specifications and (where applicable) Royal Mail requirements. However unless otherwise agreed in writing, the Supplier shall have no responsibility for checking the accuracy of supplied input. When information and/or Material is supplied by the Customer, no responsibility is accepted for imperfect work or delays in delivery due to such information and/or Materials being defective, unsuitable or late;

4.3.2 to charge the Customer reasonable additional costs and expenses incurred by it if any information and/or Materials are found to be defective, insufficient or unsuitable during production or were provided late. If any information and/or Materials are found to be deficient, the Supplier may cancel the Order or if instructed by the Customer to continue shall have no liability for the quality of the Goods; and/or

4.3.3 unless the Supplier has specified in writing to the contrary (in which case the Customer agrees to meet the reasonable costs of both storage and the return of such Materials and/or equipment), to distribute type and to destroy lithographic, photogravure or any other work or Materials immediately after the Order is completed. The Customer agrees to supply adequate quantities of Materials to cover normal levels of spoilage in the industry, where the Customer has committed to supply said Materials.

- 4.4 Orders are accepted by the Supplier subject to the availability of Goods, materials needed and personnel required (in respect of the provision of the Services) to undertake the work and to complete delivery. No contract shall arise until the Order has been accepted in writing by the Supplier (which shall include by email) or (if earlier) the Supplier undertakes an act of part performance specifically referable to the Order. The Supplier shall be under no obligation to accept Orders placed by the Customer.

- 4.5 The Supplier will submit proofs of work to the Customer for approval, subject to schedule constraints. The Supplier shall not be liable for any delay resulting from the Customer's failure to return proofs promptly, nor for any errors in the proofs which are not corrected by the Customer. The Supplier may charge the Customer reasonable extra costs and expenses for preliminary work produced by the Supplier at the Customer's request whether experimentally or otherwise and/or if the Customer requests alterations which require the submission of additional proofs; and/or where the Customer leaves style, type or layout to the Supplier's judgment but then later (as a result of that decision) requests changes to be made to any proofs, copies, printed material or Goods. 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.

- 4.6 Where machine readable codes or symbols are used by the Customer the:

4.6.1 Supplier shall print the same as specified or as approved by the Customer in accordance with generally accepted industry standards and procedures;

4.6.2 Customer shall be responsible for satisfying itself that the machine readable code or symbol used will read correctly on the equipment likely to be used by those for whom the machine readable code or symbol is intended; and

4.6.3 Customer shall indemnify the Supplier both for itself and against any claim by any third party resulting from the machine readable code or symbol not reading at all or not reading correctly for any reason whatsoever, except to the extent that such a claim arises from any failure of the Supplier to comply with clause 4.6.1 above which is not attributable to any error falling within the tolerances generally accepted in the industry in relation to printing of this kind.

## 5 DELIVERY

- 5.1 Unless otherwise agreed, delivery of Goods and/or the Services within the United Kingdom will be made at the Customer's cost and to the address specified in the Order. Delivery of the Goods shall be made by any method of transportation regarded as suitable by the Supplier at the Supplier's sole discretion. The cost of delivery of Goods outside the United Kingdom will be negotiated between the parties and confirmed in writing. The Supplier may stipulate the delivery type and speed of delivery. The Customer shall make arrangements for the off-loading at its storage facility.

- 5.2 The specified time for delivery shall be subject to receipt by the Supplier of all information and materials required: (a) from the Customer to enable the Supplier to proceed with the Order; (b) to comply with any applicable governmental or other consents. If any of the above is not received within sufficient time to enable the Supplier to complete the Order and in any event within four (4) weeks after the date of the Order, the Supplier may either extend the time for delivery or cancel the Order.

- 5.3 If on the agreed date for delivery the Customer refuses or fails to take delivery of the Goods or refuses to, or does not, permit the Supplier to carry out the Services or fails to give the Supplier adequate delivery instructions then without prejudice to any other right or remedy available to the Supplier, the

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- Supplier will be entitled at its discretion to store the Goods at the Customer's risk and the Customer shall in addition to the price payable under clause 7 pay all costs and expenses either in respect of such storage and any additional costs of carriage incurred in respect of the Goods or incurred in cancelling performance of the Services and/or re-arranging delivery of the same on an alternative date in respect of the Services.
- 5.4 The Supplier reserves the right to deliver in instalments at its discretion. Where an Order provides for performance at various agreed dates (instalments), there shall be deemed to be a separate contract for each instalment and payment for each instalment shall become due in respect of each such instalment notwithstanding any delay or failure to supply or provide the balance of the Goods and/or Services as specified hereunder. Any defect in one instalment shall not affect any other instalment. The Customer shall not be entitled to reject any instalment on the grounds that an incorrect quantity of work has been mixed with any other work to be undertaken for the Customer.
- 5.5 Reasonable endeavours will be made by the Supplier to deliver the correct quantity of Goods ordered by the Customer. However, the Customer may not reject short or excess deliveries which are within a margin of five per cent (5%) short and five per cent (5%) over or, in the case of colour work, ten per cent (10%) short and ten per cent (10%) over. In such cases, the Supplier will adjust the price of the Goods proportionately.
- 5.6 The Customer shall notify the Supplier in writing (and, where applicable, shall also notify any independent carrier engaged in delivery of the Goods) of any non-delivery and shall submit a detailed written claim within seven (7) working days after the due date for delivery of the Goods or the Services. All Services will be deemed to have been performed in accordance with the Contract unless the Customer notifies the Supplier of any non-conformance in writing within fourteen (14) days of the date of completion of the Services. All Goods must be inspected by the Customer immediately on delivery. If any Goods are damaged or lost or if (subject to clause 5.5) there has been short delivery the Customer must:
- 5.6.1 submit a detailed written claim to the Supplier and, where applicable, any independent carrier engaged in delivery of the Goods within three (3) working days of delivery of the Goods; and
- 5.6.2 endorse the consignment note accordingly. Signature by any representative of the Customer on the consignment note without any such endorsement shall release the Supplier from any liability in respect of damage or loss in transit or short delivery. Any other claims (other than those already referred to in this clause) must be made in writing to the Supplier within fourteen (14) days of delivery. In the event of all or any claims or rejections the Supplier reserves the right to inspect the Goods within seven (7) days of the claim or rejection being notified.
- 5.7 The Customer shall be deemed to have accepted the Goods and/or the Services and the Supplier shall not be liable in respect of any claim under the Contract unless the requirements set out in clause 5.6 have been complied with except in any particular case where the Customer proves that:
- 5.7.1 it was not reasonably possible to comply with the requirements set out in those clauses; or
- 5.7.2 advice (where required) was given and the claim was made as soon as reasonably possible.
- 5.8 Where mailings are made or data is provided or processed by the Supplier, while every effort is made to quote the number of addresses or data records accurately, no warranty is given or shall be implied that the quoted figure tallies with that finally reached during the execution of the Order.
- ## 6 RISK
- 6.1 Except as otherwise provided in the Contract, the risk of loss or damage to the Goods shall pass to the Customer upon delivery of the Goods in accordance with clause 5.1.
- 6.2 With the exception of items mutually agreed from time to time, subject to clause 6.1, any other property belonging to the Customer and all property given to the Supplier by or on behalf of the Customer or stored by the Supplier (whether or not for a fee) shall while it is in the possession of the Supplier or in transit to or from the Customer be at the Customer's risk unless otherwise agreed in writing by an authorised representative of the Supplier. The Customer should insure accordingly. The Supplier shall therefore have no liability to the Customer in respect of loss of or damage to such property.
- 6.3 All deliveries made to the Supplier (or its subcontractors) must be made in accordance with the Supplier's delivery instructions which are available upon request and must also be accompanied by a delivery note or docket stating the quantity and description of the material delivered. Such materials shall be delivered on pallets, boxed, packed and supplied in such a way as to withstand normal storage and handling. The Supplier (or its subcontractors) is not able to check for discrepancies between quantities shown on dockets and actual quantities delivered and the Supplier's (or its subcontractors') signature on dockets or delivery notes shall not render the Supplier liable for any shortfall. Whenever possible the Customer will be advised of any shortages and any excess material will be returned to the Customer at the Customer's expense. Collection and delivery of the Customer's Materials or Goods is not included in the Order and if required to be undertaken by the Supplier will be charged for as an extra. Such collection and delivery whether arranged by the Supplier or the Customer will be at Customer's sole risk and the carrier will be deemed to be the agent of the Customer.
- ## 7 PRICE
- 7.1 The price payable for the Goods and/or Services shall be as stated in the Order and confirmed by the Supplier or where no written Order exists, as stated in the estimate or quotation provided by the Supplier and no discount will be allowed or is to be taken.
- 7.2 The price shall include normal packaging and reasonable transit insurance but shall exclude the cost of delivery in the United Kingdom and/or overseas in accordance with clause 5 and is exclusive of Value Added Tax, customs duties and all other taxes, duties and expenses in respect of the Goods and/or Services all of which shall be added to the price for the Customer's account unless otherwise stipulated in writing by the Supplier.
- 7.3 The Supplier may increase or decrease the price of the Goods and/or Services at any time before the date of delivery to reflect any changes in delivery dates, quantities or specifications of the Goods and/or the Services requested by the Customer or to reflect any uplift in the price of raw materials or labour or such other cost increase caused by any delay or alteration to the instructions given by the Customer.
- 7.4 The Supplier may also charge the Customer:
- 7.4.1 extra for any experimental, preliminary or additional work requested by the Customer other than that specified in the relevant quotation or Order;
- 7.4.2 for any additional work involved where copy supplied by the Customer is not clear and legible;
- 7.4.3 for the return or provision of any artwork prepared by or on behalf of the Supplier and requested by the Customer;
- 7.4.4 to cover the costs of overtime and any additional costs incurred in providing expedited delivery to the Customer; and
- 7.4.5 at its standard rates in force from time to time for storing any of the Customer's property and/or any Goods which are retained by the Supplier beyond the agreed delivery date in accordance with clause 5.3 or otherwise at the Customer's request. The right is reserved for the Supplier to destroy or dispose of all such material (at the Customer's cost) fourteen (14) days after notice to that effect is given to the Customer unless the material is collected within that period or a request for further storage is made by the Customer.
- 7.5 Where the Supplier provides storage, pick and pack and associated services to the Customer, the Supplier may charge in respect of such services. Where stock items become obsolete, this shall be at the risk of the Customer.
- 7.6 If the call-off time for any line of stock being stored by the Supplier on the Customer's behalf is in excess of six (6) months or the stock has been identified as obsolete and the Customer has failed to give the Supplier instructions with regard to such stock, that line of stock shall be considered to be "Slow Moving Stock" for the purposes of these Terms and Conditions and any Contract. All such Slow Moving Stock shall be identified and reviewed by the Supplier and the Customer and the Supplier may charge the Customer an additional fee for such Slow Moving Stock or may destroy or dispose of all such material (at the Customer's cost) fourteen (14) days after notice to that effect is given to the Customer.
- 7.7 Where the Supplier is to undertake mailing services for the Customer, unless otherwise agreed in writing by the parties, if any item is delivered by or on behalf of the Customer more than five (5) days prior to the mailing for which that item is required or is held by the Supplier for more than five (5) days after such mailing, the Supplier may charge the Customer an additional fee for the storage of such item or may destroy or dispose of all such items (at the Customer's cost) fourteen (14) days after notice to that effect is given to the Customer.
- 7.8 If work on the Goods and/or the Services is suspended or delayed for more than thirty (30) days at the request of the Customer or due to the default of the Customer, then the Supplier may invoice the Customer for any work already performed, for materials specially ordered and for any other reasonable costs. Should the Order be suspended or delayed by the Customer for any reason the Supplier shall be entitled to charge for storage and for loss of or wastage or resources that cannot otherwise be used.
- 7.9 If mailing is to be undertaken by and at the cost of the Supplier the cost of postage shall be paid to the Supplier in cleared funds no later than forty eight (48) hours before the mailing begins. If such payment is not received the Supplier reserves the right to withhold the mailing and/or to cancel the Order and to recover from the Customer as a reasonable pre-estimation of the Supplier's losses an amount, at the Supplier's discretion, up to the full Order price less the cost of postage to reflect the Supplier's direct costs and loss of profit. If the actual cost of postage is less than the amount received, the Supplier may set off the excess against any amount owing to it from the Customer.
- ## 8 PAYMENT
- 8.1 The Customer shall pay the Supplier's invoices in pounds sterling (or where applicable, in the currency invoiced by the Supplier) and in full within thirty (30) days of the date of the invoice or no later than the due date expressly stated on the Supplier's invoice, whichever is the earlier.
- 8.2 If payment is not made by the Customer when due then the Supplier may, without prejudice to the Supplier's other rights under the Contract, charge

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interest (before and after judgement) at an annual rate of 2% above the base lending rate from time to time of HSBC Bank Plc to be calculated on a day to day basis on the balance outstanding until payment is made in full. Notwithstanding the above, the Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. Interest shall accrue on a daily basis and be compounded quarterly. The Customer shall indemnify the Supplier fully against all fees, costs and expenses incurred in collecting any sum properly payable by the Customer which is not paid by the agreed time in accordance with this clause.

- 8.3 Time for payment shall be of the essence.
- 8.4 All payments payable to the Supplier under any Contract (other than those which are being reasonably disputed in accordance with the process set out in clause 17 of these Terms and Conditions) shall become due immediately on its termination despite any other provision.
- 8.5 The Customer shall make all payments due under any Contract (other than those which are being reasonably disputed in accordance with the process set out in clause 17 of these Terms and Conditions) in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise to be paid by the Supplier to the Customer.

## 9 TITLE AND LIEN

- 9.1 Any metal, film, glass, engravings, transfers, dies and any other tools or materials created, owned and/or used by the Supplier or its subcontractors (without limitation in the production of type, plates, moulds, stereotypes, electrotypes, film-setting, negatives, positives, and the like) shall remain the exclusive property of the Supplier or its subcontractors (or their respective licensors). If any such items are supplied by the Customer in order for the Supplier to fulfil its obligations under the Contract, such items shall remain the sole property of the Customer and the provisions of clause 6 shall apply in respect of it.
- 9.2 Without prejudice to the Supplier's other rights hereunder, the Supplier shall retain title to and ownership of the Goods until the Supplier has received payment in full in cash or cleared funds of all sums due for all Goods supplied to the Customer on any account. If payments received from the Customer are not stated to refer to a particular invoice the Supplier may appropriate such payments to any outstanding invoice. Until title passes in any Goods, the Customer shall store the Goods (at no cost to the Supplier) in such a way that they remain readily identifiable as the Supplier's property.
- 9.3 If the Customer fails to make any payment to the Supplier when due, compounds with the Customer's creditors, executes an assignment for the benefit of the Customer's creditors, has a bankruptcy order made against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of the Customer's assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Supplier has reasonable cause to believe that any of these events is likely to occur, the Supplier shall have the right, without prejudice to any other remedies to:
- 9.3.1 enter without prior notice any premises where Goods owned by the Supplier may be, and to repossess and dispose of any Goods owned by the Supplier so as to discharge any sums owed to the Supplier by the Customer under this or any other Contract,
- 9.3.2 require the Customer not to resell or part with possession of any Goods owned by the Supplier until the Customer has paid in full all sums owed by the Customer to the Supplier under this or any other agreement, and/or
- 9.3.3 withhold delivery of any undelivered Goods and stop any Goods in transit. Unless the Supplier expressly elects otherwise, any agreement between the parties for the supply of Goods shall remain in existence notwithstanding any exercise by the Supplier of its rights under this clause 9.3.
- 9.4 Where applicable the Customer has reciprocal rights for clause 9.3.
- 9.5 Without prejudice to clause 9.3, until title of the Goods passes to the Customer, the Customer shall hold the Goods as the Supplier's bailee. If the Customer sells the Goods before they have been paid for in full the Customer shall hold the proceeds of sale in a separate account and on trust until any sum owing to the Supplier has been discharged from such proceeds.
- 9.6 The Goods shall, once the risk has passed to the Customer in accordance with clause 6 or otherwise, be and remain at the Customer's risk at all times unless and until the Supplier has retaken possession of them, and the Customer shall insure accordingly.
- 9.7 Without prejudice to its other remedies, the Supplier shall have a general lien on all property of the Customer in its possession, whether worked on or not, for all debts owed by the Customer and shall be entitled, on the expiry of twenty one (21) days' written notice to the Customer, to dispose of such property and to apply the net proceeds in reduction of such debt.

## 10 CUSTOMER'S OBLIGATIONS

- 10.1 In addition to its other obligations, the Customer shall: (a) supply the Supplier with all information and materials necessary to enable the Supplier to proceed with the Order and to comply with all applicable statutory, legal and other requirements; (b) check all copy and other work produced by the Supplier to establish that the same are correct and that no false trade description and nothing misleading (including by reason of omission) is contained therein; (c)

supply the Supplier on request with a true copy of all advertising or other material intended to be enclosed with any material prepared by the Supplier or bearing names and addresses provided by the Supplier. If such material is not provided on request the Supplier shall be entitled to cancel the Order to which such material relates; and (d) ensure that all information or materials provided by it comply with all applicable statutory requirements (including without limitation the Data Protection Act 1998) and with the Codes of Practice of the appropriate supervisory bodies including but not limited to The Advertising Association's Code of Practice on Data Protection; The British Code of Advertising, Sales Promotion and Direct Marketing; The Code of Practice of the Independent Committee for the Supervision of Standards of Telephone Information Services; Committee of Advertising Practice Codes of Practice.

- 10.2 The Customer shall ensure that any information and data supplied to the Supplier by it or on its behalf is clean, unadulterated and does not contain any computer virus. If any information and/or data supplied by the Customer is corrupt, the Supplier may at its sole option: (a) require the Customer to supply clean unadulterated data, which does not contain any computer virus; (b) decontaminate such data itself but at the Customer's expense; or (c) reject any data supplied and repudiate the Order.
- 10.3 The Customer is responsible for ensuring that all data supplied to the Supplier is completely unambiguous with regard to the format of dates supplied (which should be provided in European format, dd/mm/yy), and that a specification of the formats, and instructions for the interpretation of dates, are provided in writing. Accordingly (except in respect of any death or personal injury suffered by the Customer as a result of the Supplier's, its agents' or contractors' negligence), the Supplier shall not be liable in contract, tort or otherwise for any direct, indirect, consequential or other loss suffered by the Customer where the cause of this loss can be attributed wholly or partly to the failure of the Customer to supply the Supplier with data which has complied with the Supplier's or any legal standard or which is incapable of being made compliant due to the failure of the Customer to provide the information required to convert that data to conform with such standard.

## 11 WARRANTY

- 11.1 The Supplier warrants that the Goods supplied to the Customer will:
- 11.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982; and
- 11.1.2 comply in all material respects with the description given in the Order or, as applicable, the estimate or quotation; and
- 11.1.3 in all material respects correspond with any samples provided.
- 11.2 If any of the Goods do not conform with the warranty in clause 11.1 the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods pro rata provided that, if the Supplier so requests, the Customer shall return the Goods or the part of such Goods which is defective to the Supplier.
- 11.3 Except as provided for in the Contract, there are no warranties, express or implied, of fitness for a particular purpose, or of any other kind except as to title. In particular, all conditions, warranties, terms, undertakings and obligations which would otherwise be implied by statute or under common law or otherwise are hereby excluded to the fullest extent permitted by law.

## 12 LIABILITY

- 12.1 Nothing in these Terms and Conditions shall exclude or limit either party's liability to the other for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation or in any other circumstances where liability may not be so limited under any applicable law.
- 12.2 Subject to clauses 12.1 and 12.3, neither party shall under any circumstances be liable for:
- 12.2.1 any indirect, special or consequential loss or damage; or for any loss of profits, of contracts, of revenue, of goodwill, of anticipated savings or gains (including without limitation any postage discounts); or for any indirect loss arising from any third party claims, howsoever arising whether from delay, breach or non-performance of any of its obligations under the Contract or from any supply of the Goods or Services, from breach of a duty of care owed by the Supplier (including negligence), or otherwise;
- 12.2.2 any imperfect work or Goods and/or Services resulting from unsuitable or defective copy or Materials supplied or specified by the Customer;
- 12.2.3 any claim by the Customer whatsoever unless it is notified to the Supplier in accordance with the requirements set out at clause 5.6; nor for
- 12.2.4 any loss to the Customer arising from delay in transit or delivery which is not caused by the direct fault or negligence of the Supplier, its subcontractors or employees.
- 12.3 Without prejudice to clauses 12.1 and 12.2, the total liability of either party to the other whether in contract, tort (including negligence or breach of statutory duty), or for misrepresentation (unless fraudulent) or otherwise howsoever arising for any loss or damage, costs or expenses arising under or in connection with the Contract shall be limited to the price of the relevant Order (or estimate or quotation as applicable), or £50,000 (whichever is the lower), excluding any postage and telecommunications charges, or to refunding that part of the price which relates to the defective Goods or Services and/or replacing such defective Goods or rectifying the defect and/or reperforming

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- such defective Services. Where defective mailing Services are reperformed, the Supplier may at its discretion replace any materials included in such mailing, but shall not be required to do so.
- 12.4 The Customer shall on demand indemnify the Supplier (for itself and any agent or sub-contractor) and hold it harmless against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise by virtue of the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, substituted or re-enacted from time to time) in connection with the commencement of, or the transfer to the Supplier of responsibility for, the provision of any Services (including any dismissal or alleged dismissal of any employee or former employee of the Customer or its contractors or agents by the Supplier or any of its agents or sub-contractors).
- 12.5 As the potential losses which the Customer might suffer as a result of any breach of contract by the Supplier are more readily ascertainable by the Customer and because such losses could be wholly disproportionate to the price of the Order and so that the Supplier may keep the price of the Order as reasonable as possible the Supplier's liabilities are limited in accordance with these Terms and Conditions and it is the Customer's responsibility to insure against these risks.
- 12.6 Insofar as it appears to any arbitrator or court that any term of these Terms and Conditions or the Contract which seeks to restrict or limit the liability of the Supplier to the price of the Order or any specified sum and to which the Unfair Contract Terms Act 1977 applies does not satisfy the test of reasonableness, such restriction or limitation shall not be disregarded or treated as null and void or as having no application but shall be construed as if there were substituted therefore such greater sum as would be in the opinion of the arbitrator or court be reasonable and be given effect accordingly.

## 13 CONFIDENTIALITY

- 13.1 For the purposes of the Contract, "Confidential Information" means any information that is or has been disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") pursuant to or in connection with the terms of the Contract (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such) including, without limitation, all advice, data and information supplied to the Receiving Party, unless the information is public knowledge or already known to the Receiving Party at the time of disclosure or subsequently becomes public knowledge other than by breach of the Contract or subsequently comes lawfully into the possession of the Receiving Party from a third party.
- 13.2 Except as provided by clause 13.3 of these Terms and Conditions, the Receiving Party shall at all times during the continuance of any Contract and for 12 months after its termination:
- 13.2.1 keep all Confidential Information confidential and accordingly not disclose any Confidential Information to any other person; and
- 13.2.2 not use any Confidential Information for any purpose other than the performance of its obligations under the Contract.
- 13.3 Any Confidential Information may be disclosed by the Receiving Party to:
- 13.3.1 any governmental or other authority or regulatory body having the legal authority to request the Confidential Information; or
- 13.3.2 any of its employees who it is reasonably necessary to inform in order for that party to fulfil its obligations under the Contract,
- to such extent only as is necessary for the purposes contemplated by the Contract, or as is required by law, and subject in each case to that party using its best endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.

## 14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 Unless otherwise agreed in writing between the parties, all intellectual property rights (including without limitation any patents, designs, trade marks, service marks, trade names, logos, get-up, domain names, copyright (including rights in computer software), database rights, semiconductor topography rights, rights in performances, moral rights, confidential information, know-how, whether registered or not including applications for registration and all similar forms of protection anywhere in the world) ("Intellectual Property Rights") in the Goods or Services (or material used or supplied by the Supplier in performing the Services), whether or not created in connection with the Order for the Goods or Services, shall vest in and remain the Supplier's exclusive property or that of its licensors. Nothing in any Contract shall be construed as creating an assignment or licence of those Intellectual Property Rights.
- 14.2 The Supplier shall not be obliged to supply any printed material which in its reasonable opinion may be illegal or libellous or which may infringe the Intellectual Property Rights of any third party or otherwise result in a claim under clause 14.3 and the Supplier shall be entitled to cancel without liability any Order requesting any such printed materials and/or the Contract.
- 14.3 The Customer grants the Supplier a licence to use all data, materials and other items provided by the Customer (the "Data") for the purposes of providing the Goods and/or Services and shall indemnify and keep the Supplier fully indemnified against any and all actions, claims, proceedings, losses, damages, demands, liabilities, costs (including legal and other professional costs) and expenses arising out of or in connection with any finding or claim that:

- 14.3.1 the Supplier's use or possession of the Data or any other items supplied or specified by the Customer is illegal, libellous or obscene or is in breach of any third party's rights (including, without limitation, Intellectual Property Rights); and/or
- 14.3.2 the provision of the Services and/or the Goods by the Supplier in accordance with an Order or otherwise in accordance with the instructions of the Customer is illegal or unlawful or infringes postal or other regulations or is in breach of any trade description or other legislation or breaches any third party's rights (including, without limitation, Intellectual Property Rights).
- 14.4 The Supplier shall have the right upon request from the body administering the Quality Standard in Mail Production or any similar or successor accreditation scheme, to supply such body with samples of any mailings relating to the Contract.
- 14.5 Subject to clause 14.3, the Supplier shall indemnify and keep the Customer fully indemnified against any and all actions, claims, proceedings, losses, damages, demands, liabilities, costs (including legal and other professional costs) and expenses arising out of or in connection with any finding or claim that the Goods and/or Services are illegal, libellous or obscene or are in breach of any third party's rights (including, without limitation, Intellectual Property Rights) (save to the extent that such illegality, libel, obscenity or breach results from the use of the Data in accordance with the requirements of any Order, or from the Supplier's compliance with any instructions from the Customer).
- 14.6 Any artwork, template or mock-up supplied by the Customer to the Supplier (or created for the Customer by the Supplier and paid for by the Customer) remains the intellectual property / copyright of the Customer.

## 15 USE AND DISCLOSURE OF PERSONAL DATA

- 15.1 In this clause terms and expressions defined in the Data Protection Act 1998 (the "Act") and used in this clause shall have the same meaning given to them in that Act. For the avoidance of doubt the Customer is the Data Controller as defined by the Act in respect of personal data and the Supplier is the Data Processor.
- 15.2 The Customer consents to the processing by or on its behalf of personal data supplied by the Customer and/or held by the Supplier for the purposes of processing any Orders and warrants that it has obtained the necessary consents from all individual data subjects for the processing of personal data in accordance with the Contract. Unless otherwise agreed the Customer does not consent to the use of such personal data for direct marketing purposes and disclosure by the Supplier to third parties for the Supplier's marketing purposes. The Customer's statutory rights under the Act shall remain unaffected.
- 15.3 The Customer agrees that it shall and shall procure that its employees, agents and sub-contractors shall, at all times, comply with the provisions of the Act and warrants to the Supplier that all data provided to the Supplier is properly and lawfully held and provided (including without limitation in accordance with the Act). The Customer indemnifies the Supplier against all actions, claims, proceedings, losses, damages, demands, liabilities, costs (including legal and other professional costs) and expenses arising out of or in connection with any breach of this clause and/or the Act.
- 15.4 Where the Supplier releases a list of names and addresses or agrees to return addressed material to the Customer, the same are supplied for the sole use of the Customer and on the basis that the list and compilation of addressed material is confidential to the Supplier, that such confidence will be maintained by the Customer, that such materials will be used by the Customer for the purpose of making a single mailing in respect of the specific Contract only and no such materials or any information subcontracted therefrom shall be used by the Customer for any other purposes or copied or recorded or passed to any third party nor without the Supplier's written consent may any such material be entrusted to any agent or sub-contractor or passed to any third party for filing or posting. Lists of names and addresses are compiled from many sources and, while every effort is made to ensure accuracy, no guarantee is given that such lists are complete or accurate.

## 16 CANCELLATION AND TERMINATION

- 16.1 The Customer or the Supplier may cancel an Order in writing and on terms that the other party be indemnified in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damage, charges and expenses incurred as a result of the cancellation. Goods returned to the Supplier without its written consent will not be credited to the Customer.
- 16.2 Either party may, by notice to the other, without prejudice to any other rights, immediately suspend or cancel any uncompleted part of the Contract or any specific Order (or in the case of the Supplier, any other work for the Customer) or, in the case of the Supplier, stop any Goods in transit, any Services commenced or require payment for materials and for work already carried out whether completed or not (such charge to an immediate debt due to the Supplier) or to require satisfactory security for further deliveries under the Contract if:
- 16.2.1 the other party is in material breach of any of its obligations to the other under the Contract or any under any other agreement between the parties; or
- 16.2.2 the other party's financial position is such that that party, its directors, shareholders or creditors takes or is entitled to take steps to institute

# STANDARD TERMS AND CONDITIONS OF SALE

- formal insolvency proceedings with respect to that party of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation).
- 16.3 If a Contract or any specific Order is terminated for any reason it shall not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination. On termination the Customer shall immediately pay all outstanding sums due to the Supplier.
- 16.4 Without prejudice to the Supplier's rights under clauses 16.1 and 16.2, if the parties have agreed:
- 16.4.1 multiple production runs, the Customer may unless otherwise agreed in writing by the Supplier terminate the Order for such multiple production runs by giving the Supplier at least sixty (60) days' written notice expiring before any agreed delivery date, provided that the Customer pays for all previous Orders and instalments of Goods and/or Services in full before the termination date; or
- 16.4.2 printing of a periodical publication, neither party may terminate an Order for the printing of a periodical publication unless thirteen (13) weeks' notice in writing is given in the case of periodicals produced either monthly or more frequently, or twenty-six (26) weeks' notice in writing is given in the case of any other periodicals. Notice may be given at any time but wherever possible should be given by the relevant party after completion of work by the Supplier on any one issue of the periodical.
- 16.5 Either party may give notice in writing to the other terminating the Contract (or an Order made under it) with immediate effect if:
- 16.5.1 the other party commits any material breach of any of the terms of the Contract and that breach (if capable of remedy) is not remedied within 30 days of notice being given requiring it to be remedied;
- 16.5.2 an order is made or a resolution is passed for the winding-up of the other party or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt;
- 16.5.3 there is a change of Control of the other party (and for the purposes of the Contract, "Control" means the ability to direct the affairs of another whether by virtue of the ownership of shares, contract or otherwise); or
- 16.5.4 the other party ceases, or threatens to cease, to carry on business.
- 17 DISPUTE RESOLUTION**
- 17.1 In the event of any disagreement or dispute between the parties they shall first endeavour to resolve it by referring it to the designated point of contact for each party or if they are unable to agree, by referring it to their respective line managers. If these persons are unable to reach agreement within one month of the dispute being referred to them the parties shall seek to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 18 CUSTOMER'S NAME**
- 18.1 The Supplier shall make no use of the Customer's name without the express permission in writing of the Customer, other than to the extent necessary to comply with the requirements of any Order placed by the Customer. The Customer has the right to terminate the Contract should the Supplier do anything which damages the name or reputation of the Customer provided the process detailed in clause 17 has been followed.
- 19 GENERAL**
- 19.1 The Supplier shall have no liability to the Customer, or be deemed to be in breach of the Contract, as a direct or indirect consequence of an event outside the Supplier's reasonable control (including without limitation fire, flood, storm, severe weather conditions or other natural events; war, terrorist action, hostilities, revolution, riot or civil disorder; any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, materials (including any computer hardware or software or any records); the introduction of, or any amendment to, a law or regulation, or any change in the interpretation or application by any authority; any strike, lockout or other industrial action (whether or not relating to either party's workforce); any obstruction of any public or private highway or road or any event which prevents or obstructs access to the location where the Services are to be performed or the Goods are to be delivered; any breach of contract or default by, or insolvency of a third party (including an agent or sub-contractor); the Supplier's ability to obtain supplies of adequate or suitable materials; or any other event outside the Supplier's reasonable control, whether similar or not to any of the foregoing). If such a contingency continues for more than 30 days, the Supplier may at its option suspend performance or cancel its obligations under the Contract without obligation for any damage or consequential loss arising there from.
- 19.2 The Customer shall have no liability to the Supplier, or be deemed to be in breach of the Contract, as a direct or indirect consequence of an event outside the Customer's reasonable control (including without limitation fire, flood, storm, severe weather conditions or other natural events; war, terrorist action, hostilities, revolution, riot or civil disorder; any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, materials (including any computer hardware or software or any records); or any other event outside the Customer's reasonable control, whether similar or not to any of the foregoing). If such a contingency continues for more than 30 days, the Customer may at its option suspend performance or cancel its obligations under the Contract without obligation for any damage or consequential loss arising there from.
- 19.3 The Customer engages the Supplier as an independent contractor. Nothing in any Contract shall create a partnership, joint venture or the relationship of principal and agent or employer and employee.
- 19.4 If any provision of the Contract or these Terms and Conditions (or part thereof) is found by any court or administrative body or competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of the provision (or part thereof) shall not affect the other provisions of the Contract and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.
- 19.5 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 19.6 All notices which are required to be given under the Contract shall be in writing and shall be sent to the recipient at its registered office or to such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Notices should be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post forty-eight (48) hours after posting and if by facsimile transmission when despatched (with confirmation of sending).
- 19.7 Neither party shall assign or charge any of its rights or the benefit of all or part of the Contract without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 19.8 Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 19.9 Any reference in these Terms and Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended.
- 19.10 For the purposes of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of the Contract to be enforced by third parties but any third party right which exists independently of that Act shall be preserved.
- 19.11 The Customer shall not, during the Contract Term or for a period of 12 months from the date of termination of the Contract (for whatever reason), solicit, endeavour to entice away, employ, offer to employ or engage any person who is at any time during the Contract Term employed by the Supplier in connection with the provision of the Services under the Contract (whether or not such person would commit any breach of his contract of service or employment in leaving such employment or engagement).
- 19.12 Subject to clause 17 of these Terms and Conditions, the 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 agree to submit to the exclusive jurisdiction of the English Courts.
- 19.13 The Contract and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of the Contract. The Customer acknowledges and agrees that in entering into any Contract, and the documents referred to in it: (a) it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract as a warranty; (b) the only remedy available to it for breach of the warranties shall be as set out in clause 11 of these Terms and Conditions. Nothing in this clause shall operate to limit or exclude any liability for fraud.