



## **CONDITIONS OF CONTRACT**

### **1. INTERPRETATION**

(a) These conditions ("Conditions") shall apply to all contracts for the provision of printing and mailing services and goods ("the Work") by CarpeDeeM Limited ("the Company") to the customer whose details are printed on the invoice or letter attached ("the Customer") to the exclusion of all other terms and conditions which the Customer may purport to apply under any price estimate, quotation, purchase order, confirmation of order or similar document.

(b) All orders for works shall be deemed to be an offer by the Customer to purchase the Work pursuant to these Conditions.

(c) No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company carries out the Work.

(d) In these Conditions the singular shall include the plural and the masculine the feminine so far as the context allows.

### **1. 2. SUB-CONTRACTING**

The Company shall sub-contract the Work to such third party as it sees fit.

### **1. 3. PRICE VARIATION**

All estimates are based on the Company's current costs of production and unless otherwise agreed are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.

### **1. 4. TAX**

The Company reserves the right to charge the amount of any value added tax payable whether or not included on the estimate or invoice.

### **1. 5. PRELIMINARY WORK**

All work carried out (whether experimentally or otherwise) at the Customer's request shall be charged.

### **1. 6. COPY**

A charge may be made to cover any additional work involved where copy supplied is not clear and legible.

### **1. 7. ELECTRONIC FILES**

2. (a) It is the Customer's responsibility to maintain a copy of any original electronic file.

3. (b) The Company shall not be responsible for checking the accuracy of supplied input from an electronic file unless otherwise agreed.

4. (c) Without prejudice to clause 16, if an electronic file is not suitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action the Customer may make a charge for any resulting additional cost incurred.

### **1. 8. PROOFS**

Proofs of all work may be submitted for the Customer's approval and the Company shall not be liable for any errors not corrected by the Customer in proofs so submitted. The Customer's alterations and additional proofs necessitated thereby may be charged extra. When type or layout is left to the Company's judgement, changes therefrom made by the Customer may be charged extra. Should the Customer wish a job to be run without a colour proof generated on the printer's equipment, the Customer will be held liable for any costs incurred through loss of production or materials wasted if the Work is later deemed to be incorrect for colour or content.

### **1. 9. COLOUR PROOFS**

Due to differences in equipment, paper, inks and other conditions between colour proofing and production runs, a reasonable variation in colour between the colour proofs and the completed job will be deemed acceptable to the Customer unless otherwise agreed in advance of the job with the Company in writing.

### **1. 10. VARIATIONS IN QUANTITY**

Every endeavour will be made to deliver the correct quantity ordered but estimates are conditional upon margins of 5 per cent for work in one colour only and 10 per cent for other work being allowed for overs or shortage (4 per cent and 8 per cent respectively for quantities exceeding 50,000), the same to be charged or deducted accordingly.

### **1. 11. DELIVERY AND PAYMENT**

2. (a) Delivery of the Work shall be accepted when tendered and thereupon or if earlier, and on notification that the Work has been completed, the Company shall send an invoice to the Customer and payment shall become due.

3. (b) Unless otherwise specified the price is for delivery of the Work to the location set out on the estimate. A charge may be made to cover any extra costs involved for delivery to a different address.

4. (c) Specified or requested dates and times of delivery are to be treated as estimates only and time shall not be of the essence. Failure of the Company to deliver by the estimated date or time shall not entitle the Customer to treat this contract as repudiated.

5. (d) Should expedited delivery be agreed, an extra may be charged to cover any overtime or any other additional costs involved.

6. (e) The Company may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the contract. Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.

7. (f) If for any reason the Customer fails to accept delivery of any of the goods when they are ready for delivery, or the Company is unable to deliver the goods on time because the Customer has not provided appropriate instructions, documents or authorisations, risk in the goods shall pass to the Customer, the goods shall be deemed to have been delivered, and the Company may store the goods until delivery, whereupon the Customer shall be liable for all related costs and expenses.

8. (g) Should work be suspended at the request of or delayed through any default of the Customer for a period of 30 calendar days, the Company shall then be entitled to payment for work already carried out, any materials specially ordered and any other additional costs, including storage. In the event that no work has been commenced, the Company reserves the right to charge a cancellation fee to cover any costs incurred by the Company.

9. (h) The payment terms are strictly 30 days following the last day of the month of the invoice unless otherwise agreed in writing.

10. (i) The Company may charge interest on any overdue sums at the rate of 4% above base rate from time to time of Barclays Bank plc.

11. (j) The Company reserves the right to set-off any sum against any monies owed by the Customer to the Company.

12. (k) The Company reserves the right to suspend work, if any monies remain owed by the Customer to the Company, until payment is made in full in cleared funds.

13. (l) The Company reserves the right to retain any electronic files or other materials provided by the Customer to the Company until payment is made in full in cleared funds.

#### 14. **12. RISK AND RETENTION OF TITLE**

15. (a) The risk in all goods delivered in connection with the Work shall pass to the Customer on delivery.

16. (b) Notwithstanding the provision of (a) above, full legal and equitable title and interest in all and any of the goods supplied to the Customer shall remain with the Company and shall not pass to the Customer until the Company shall have received payment in full of all amounts due and owing to the Company.

17. (c) Until property in the goods passes to the Customer, the Customer shall hold the goods on a fiduciary basis as bailee for the Company. Notwithstanding this clause, the Customer may use the goods in the ordinary course of business for the account of the Company and such dealing shall be a use of the Company's property.

18. (d) If the Customer shall sell the goods before they

have been paid for in full he shall hold the proceeds of sale on trust for the Company in a separate account until any sum owing to the Company has been discharged from such proceeds.

1. (e) Until such time as property in the goods passes from the Company, the Customer shall upon request deliver up the goods to the Company. If the Customer fails to do so the Company may enter upon the Customer's premises where the goods are situated and repossess the goods.

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#### 4. **13. CLAIMS**

Notification of any damage, delay or loss of goods in transit or of non-delivery must be given in writing to the Company and the carrier within three clear days of delivery (or, in the case of non-delivery, within 28 days of notification of despatch of the goods) and any claim in respect thereof must be made in writing to the Company and the carrier within seven clear days of delivery (or, in the case of non-delivery, within 42 days of notification of despatch). All other claims must be made in writing to the Company within 28 days of delivery. The Company shall not be liable in respect of any claim unless the aforementioned requirements have been complied with, except in any particular case where the Customer proves that it was not possible to comply with the requirements and notice (where required) was given and the claim made as soon as reasonably possible.

#### 1. **14. LIABILITY**

2. (a) The Company shall not be liable to the Customer whether in contract or in tort including (without limitation) negligence and/or breach of statutory duty for any loss of profit, loss of production, pure economic loss, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever howsoever caused, which arise out of any act, omission, neglect or default (including negligence) in the performance of the contract by the Company, its employees, agents or sub-contractors, or in respect of any representation or statement (whether oral or written) or third party claims occasioned directly or indirectly by delay in completing the Work or for any loss to the Customer arising from delay in transit or delivery whether as a result of the Company's negligence or otherwise. Any liability for direct loss or damage in transit arising due to a fault on the part of the Company shall be limited to the amount of purchase price of the goods.

3. (b) Insofar as is permitted by law where work is defective for any reason, including negligence, the Company's liability (if any) shall be limited to rectifying such defect. In no circumstances shall such liability exceed the value of the defective part of the Work or of any loss directly occasioned by any delay in completing the Work, which shall be limited to the contract price. Where the Company performs its obligation to rectify defective work under this condition the Customer shall not be entitled to any further claim in respect of the work done nor shall the Customer be entitled to treat delivery thereof as a ground for repudiating the contract, failing to pay for the work or cancelling further deliveries.

4. (c) Nothing in these Conditions shall exclude the Company's liability for death or personal injury as a result of its negligence, or fraud or fraudulent misrepresentation.

#### 5. **15. STANDING MATERIAL**

6. (a) Metal, film and other materials owned by the Printer and used by him in the production of type, plates, film-setting, negatives, positives and the like shall remain his exclusive property. Such items when supplied by the Customer shall remain the Customer's property.

7. (b) Type may be distributed and lithographic or photogravure film, plates, tapes, disks or other work effaced immediately after the order is executed unless written arrangements are made to the contrary. In the latter event, rent may be charged.

8. (c) The Company shall not be required to download any digital data from its equipment or supply the same to the Customer on disk, tape or by any communication link unless written arrangements are made to the contrary.

#### 1. **16. CUSTOMER'S PROPERTY**

2. (a) The Customer's property and all property supplied to the Company by or on behalf of the Customer shall, while it is in the possession of the Company or in transit to or from the Customer, be deemed to be at the Customer's risk unless otherwise agreed. The Customer should insure accordingly.

3. (b) The Company shall be entitled to make a reasonable charge for the storage of any of the Customer's property left with the Company before receipt of the order or after notification to the Customer of completion of the Work.

#### 4. **17. MATERIALS SUPPLIED BY THE CUSTOMER**

5. (a) The Company may reject any film, disks, paper, plates or other materials supplied or specified by the Customer which appear to it to be unsuitable. Additional cost incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by the Company in ascertaining the unsuitability of the materials then that amount shall not be charged to the Customer.

6. (b) Where materials are so supplied or specified the Company will take every care to secure the best results but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified.

7. (c) Quantities of materials supplied shall be adequate to cover normal spoilage.

#### 8. **18. INSOLVENCY**

Without prejudice to other remedies, if the Customer becomes insolvent (namely, being a company is deemed to be 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 enters into any arrangement within the meaning of the Insolvency Act 1986 Part I or Part VIII or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him) the Company shall have the right not to proceed further with the contract or any other work for the Customer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Customer, such charge to be an immediate debt due to the Company. Any unpaid invoices shall become immediately due for payment and the Company shall have the right to terminate the contract without notice.

1. **19. GENERAL LIEN**

Without prejudice to other remedies, in respect of all unpaid debts due from the Customer the Company shall have a general lien on all goods and property (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 Customer 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 Customer for any balance remaining, be **discharged from all liability in respect of such goods or property.**

1. **20. ILLEGAL MATTER**

2. (a) The Company shall not be required to proceed with the printing or mailing of any matter which in its opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party and shall have the right to terminate the contract without notice.

3. (b) The Customer agrees to indemnify the Company against all claims, costs and expenses arising out of any libellous matter or any failure by the Customer to obtain any clearances for which he was responsible for in respect of third party copyright works, trade marks, designs or other intellectual property contained in any material printed for the Customer. The indemnity shall include (without limitation) any reasonable amounts paid by the Company in settling or defending any such claim.

4. **21. PERIODICALS**

C PUBLISHED contract for the printing or mailing of a periodical publication may not be terminated by either party unless 13 weeks' notice in writing is given in the case of periodicals produced monthly or more frequently, or 26 weeks' notice in writing in the case of other periodicals. Notice may be given at any reasonable time but, wherever possible, should be given after completion or work on any one issue. Nevertheless the Company may terminate any such contract forthwith should any sum due thereunder remain unpaid.

1. **22. MACHINE READABLE CODES**

2. (a) In the case of machine readable codes or symbols the Company shall procure that the same are printed as specified or approved by the Customer in accordance with generally accepted standards and procedures.

3. (b) The Customer shall be responsible for satisfying himself that the code or symbol will read correctly on the equipment likely to be used by those for whom the code symbol is intended.

4. (c) The Customer shall indemnify the Company against any claim by any party resulting from the code or symbol not reading or not reading correctly for any reason except to the extent that such claim arises from any failure of the Company to comply with paragraph (a) above which is not attributable to error falling within the tolerances generally accepted in the trade in relation to printing of this sort.

5. **23. GUARANTEE**

(a) The directors (where the Customer is a company), the partners (where the Customer is in partnership) or the sole trader (where the Customer is a sole trader) (each being the "Guarantor") each hereby irrevocably and unconditionally and jointly and severally guarantees to the Company as principal obligator, and not merely as surety, the full and due performance by the Customer of all its obligations under or pursuant to the agreement between the Company and the Customer for the Works incorporating these Conditions.

(b) The Guarantor hereby further agrees to indemnify and keep indemnified the Company against all losses, damages, costs and expenses or otherwise which may be incurred by the Company by reason of any default on the part of the Customer in fully and duly performing and observing the Conditions on the Customer's part contained herein.

(c) It is hereby agreed that any amendment to or variation to these Conditions or any neglect, granting of time or other indulgence or forbearance on the part of the Company to the Customer or to any third party or any other act, event or omission which but for this condition 23 would operate to impair or discharge the liability of the Guarantor shall not release, discharge, impair or exonerate or in any way affect the liabilities of the Guarantor under this condition 23. This condition 23 is a continuing guarantee and shall remain in force until all obligations under these Conditions have been fully satisfied. The Guarantor hereby waives any right it may have of first requiring the Company to proceed against or enforce any claims against the Customer or any other person.

1. **24. FORCE MAJEURE**

The Company shall be under no liability if it shall be unable to carry out any provision of the contract for any reason beyond its reasonable control including (without limiting the foregoing) any; acts of God; legislation; war; fire; flood; drought; terrorist activities; inadequacy or unsuitability of any instructions, electronic file or other data or materials supplied by the Customer; 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 Customer may by written notice to the Company elect to terminate the contract and pay for work done and materials used but subject thereto shall otherwise accept delivery when available.

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The Customer shall use its best endeavours to comply with these Conditions and the Company shall have the right to terminate the contract in the event of breach of these Conditions. In the event of breach the Customer shall indemnify and keep the Company indemnified for all losses, costs, damages and claims arising out of such breach.

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2. **26. DATA PROTECTION**

Where the Customer provides the Company with personal data, the Customer accepts that such data will be held securely in confidence and processed for the purpose of carrying out the Work pursuant to the contract. In considering any application for credit, the Customer accepts that the Company may consult with and disclose certain data to credit reference agencies, banks, credit insurers and other third parties, who may process the data.

1. **27. ASSIGNMENT**

The Company may assign the contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the contract or any part of it without the prior written consent of the Company.

1. **28. 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 Wales.

1. **29. GENERAL**

(a) Each right or remedy of the Company under the contract is without prejudice to any other right or remedy of the Company whether under the contract

or not.

(b) If any provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.

(c) Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

(d) Any waiver by the Company of any breach of, or any default under, any provision of the contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract.

(e) The parties to the contract do not intend that any term of the contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

### **1. 30. COMMUNICATIONS**

(a) All communications between the parties about the contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

(i) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or  
(ii) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the contract or such other address as shall be notified to the Company by the Customer.

(b) Communications shall be deemed to have been received:

(i) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(ii) if delivered by hand, on the day of delivery; or

(iii) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

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