

TERMS AND CONDITIONS OF TRADING

(1) General

- (a) In the following Terms and Conditions of Trading ("Terms and Conditions") the following words listed below shall, unless the context otherwise requires, have the meanings respectively set opposite them.
- "supplier" Montgomery Litho Limited, all divisions thereof and its subsidiary and associated companies;
- "customer" the party or parties to the contract other than the supplier;
- "goods" the goods which are the subject matter of the contract;
- "contract" the contract between the supplier and customer for the provision of goods and services following the customer's acceptance of these Terms and Conditions;
- (b) Save as expressly provided in the estimate, these Terms and Conditions are the only conditions upon which the supplier is prepared to deal with the customer and they shall govern the contract to the entire exclusion of all other terms or conditions.
- (c) Save as expressly provided in the estimate, each estimate sent by the supplier to the customer shall be deemed to be an offer by the supplier for the supplier to carry out the work subject to these Terms and Conditions and no contract shall exist until the customer expressly gives notice of acceptance of the estimate and accompanying Terms and Conditions or instructs the supplier to proceed. An instruction to proceed shall be deemed to be acceptance of these Terms and Conditions.
- (d) No terms or conditions endorsed upon, delivered with or contained in the customer's acknowledgement, purchase order, acceptance of the estimate or credit account application form or similar document will form part of the contract and the customer waives any right which it otherwise might have to rely on such Terms and Conditions. No waivers, alterations or modifications of these Terms and Conditions shall be valid unless made by the supplier under Clause 24 below;
- (e) Any concession or waiver made by the supplier at any time shall not prejudice the exercise of its rights hereunder;
- (f) The supplier reserves the right to correct any clerical errors made by its employees at any time;
- (g) Each of the clauses of these Terms and Conditions and every part hereof shall be separate and severable to the extent that if one clause or one part thereof shall be unenforceable the other clauses and other parts of the clause respectively shall be effective;
- (h) Each delivery of goods under this contract shall be deemed to constitute a separate contract to which the terms and conditions hereof shall apply, provided that these Terms and Conditions shall be subject to and shall in no way affect the supplier's rights under any other clause to suspend or terminate the whole contract in the circumstances therein mentioned;
- (i) All estimates given or made by the supplier are, unless the supplier decides at any time to extend such period, open for acceptance (in writing) by the customer for a period of 14 days only from their date. All estimates and offers are also given or made subject to the availability of the materials and any other items required to give effect to the supplier's obligations under these Terms and Conditions.

(2) Price Variation

Estimates are based on the supplier'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.

(3) Tax

Estimates and invoices are exclusive of VAT.

(4) Preliminary Work

All work carried out at customers request whether experimentally or otherwise shall be charged at the same rate as stated in the estimate.

(5) Copy/Artwork/Files

A charge may be made to cover any additional work involved where any files, copy, artwork or any such other item of origination supplied is not clear, suitable, correctly formatted or otherwise supplied as requested by the supplier.

(6) Proofs

Proofs may be submitted for customer's approval and the supplier shall incur no liability for any errors not corrected by the customer in proofs so submitted. Customer's alterations and additional proofs necessitated thereby shall be

charged extra. When style, type or layout is left to the supplier's judgement changes made by the customer after the initial presentation shall be charged extra.

(7) Delivery and Payment

- (a) Delivery of the goods shall be accepted when delivery is tendered by the supplier and thereupon or, if earlier, on notification that the work has been completed, payment shall become due.
- (b) No deduction shall be made by the customer from the payments due under this contract unless otherwise stated overleaf;
- (c) The customer shall not be entitled to withhold or set off payments for any reason whatsoever;
- (d) Any time and dates quoted for delivery are approximate only and are not guaranteed and the supplier shall not be liable for any delay in delivery of goods howsoever caused. Any time or date for delivery shall not be of the essence unless previously agreed by the supplier in writing.
- (e) Unless otherwise specified the price quoted is for delivery of the goods to the customer's address as set out in the estimate. A charge may be made to cover any extra costs involved for delivery to a different address.
- (f) The customer shall be liable to the supplier for any increase in the cost of carriage and insurance where the customer requests delivery in manner other than that selected by the supplier or where a third party carrier (quoted in the estimate) increases its costs following the estimate being provided to the customer and the customer hereby indemnifies the supplier against such increases.
- (g) Should expedited delivery be agreed an extra may be charged to cover any overtime or any other additional costs involved.
- (h) Should work be suspended at the request of or delayed through any default of the customer for a period of 14 days or more the supplier shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.
- (i) The customer will reimburse the supplier for all outlays and expenses (supported wherever reasonably practicable by the relevant original vouchers/receipts/invoices) properly and reasonably incurred by the supplier as a result of or in the course of the supply of the goods such charges to include but not limited to all costs incurred as a result of non-payment.
- (j) The supplier shall be entitled to charge interest in accordance with the Late Payment of Commercial Debts [Interest] Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 on all overdue payments, running said interest from the due date for payment until payment of the outstanding amount together with any interest due thereon to the supplier.
- (k) Time of payment is of the essence of the contract.

(8) Suspension or Cancellation of Further Deliveries

- (a) The supplier shall be entitled to suspend or cancel (without prejudice to its other claims and rights under this contract) further deliveries or other services under this and/or any other contract between the parties hereto (1) if payment is overdue, or (2) if the customer fails to take delivery of any goods. For the purposes of this clause, time of payment is of the essence of the contract.
- (b) The supplier shall not be obliged to accept any cancellation or reduction of the goods to be provided to the customer under these Terms and Conditions but, in the event that the supplier shall agree (in writing) to any such change, then such change shall be subject to reasonable cancellation, suspension or reduction charges.
- (c) If the customer purports to cancel the goods to be provided under these Terms and Conditions, the supplier shall be entitled to:
- (i) cease performance under the contract, and/or
- (ii) terminate the contract, and/or
- (iii) retain any payments made under this contract, and recover from the customer any outstanding payments which are due and payable by the customer to the supplier at the date of cancellation

(9) Risk

Risk of damage to, destruction or loss of the goods shall pass to the customer:-

- (a) in the case of goods to be delivered to the customer's premises, at the time when the supplier delivers the goods to the customer's premises; or
- (b) in the case of goods to be collected from the suppliers premises, at the time when the supplier notifies the customer that the goods are available for collection; or
- (c) in the case of goods to be delivered otherwise than at the customer's premises, at the time when the supplier delivers the goods; or
- (d) if the customer wrongfully fails to take delivery of the goods, at the time when the supplier has tendered delivery of the goods. and the customer will insure the goods against theft, damage or destruction accordingly.

(10) Variations in Quantity

Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon the following margins being allowed for overs or shortage the same to be charged or deducted:-

- 10 per cent for quantities of less than 5,000
- 5 per cent for quantities over 5,000 and less than 50,000
- 4 per cent for quantities exceeding 50,000

(11) Claims

- (a) Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to the supplier and the carrier within three clear days of delivery (or, in the case of non-delivery, within 7 days of despatch of the goods) and any claim in respect thereof must be made in writing to the supplier and the carrier within seven clear days of delivery (or, in the case of non-delivery, within 28 days of despatch). All other claims must be made in writing to the supplier within 14 days of delivery. The supplier shall not be liable in respect of any claim unless the aforementioned requirements have been complied with.
- (b) In the event of a valid claim for under-delivery, loss of or damage to any part of the goods for which the supplier is responsible in these Terms and Conditions, the supplier undertakes at its option either to reprocess or replace such part of the goods at its expense to the extent required to make good the under-delivery, loss of or damage to such part of the goods, or alternatively to take possession of the goods and refund the contract price attributable to such part which has been paid, the supplier shall not be under any further or other liability to any person in connection with such under-delivery, loss of or damage to the goods.

(12) Title and Property

- (a) Title and property in the goods shall pass to the customer only when the customer has paid the supplier all sums outstanding by the customer to the supplier or when the supplier serves written notice upon the customer specifying that title and property in the goods has passed, whichever shall be the earlier in time. The goods shall be separately stored by the customer and clearly marked as the property of the supplier until such time as all sums due by the customer to the supplier under or pursuant to this contract shall have been paid. Payment shall not be treated as having been made by cheque, credit or debit card until payment being made by such means has cleared.
- (b) If, before title to the goods passes to the customer, the customer shall sell or otherwise deal with the goods in such a manner as to pass to a third party a valid title to the goods, the customer:-
 - (i) shall hold the proceeds of any such sale or disposal and any rights or claims against the parties arising out of such sale or disposal in a fiduciary capacity for and to the account of the supplier; and
 - (ii) shall take all necessary steps to keep such proceeds separate from other monies, to pay over such proceeds to the supplier and to transfer to the supplier any rights or claims against third parties, to the extent necessary to discharge in full the customer's indebtedness to the supplier.
- (c) If any of the goods are incorporated in or used as material for other goods before payment for the goods has been made, the property in the whole of such other goods shall vest in and remain with the supplier until such payment has been made and the provisions of sub-clauses 12(a) and 12(b) shall apply mutatis mutandis to such other goods.

- (d) Where the contract is terminated in accordance with clause 18 below or any sums due by the customer to the supplier have not been paid when they fall due then the customer's right to re-sell or otherwise deal in the goods shall automatically terminate and the supplier shall be entitled to re-possess any of such goods forthwith.
- (e) In accordance with clause 16(d) it is irrevocably agreed that notwithstanding any materials supplied by the customer full title and property in the goods will rest with the supplier.
- (f) The customer shall permit any officer, employee, representative or agent of the supplier to enter the customer's premises and to repossess the goods at any time prior to the passing of title and property in the goods.

(13) Liability

- (a) The supplier shall not be liable for any loss, whether direct or indirect, consequential or otherwise, or third party claims occasioned by any failure to complete or delay in completing the contract or failure of or any delay in delivery or otherwise arising out of these Terms and Conditions;
- (b) Except in respect of death or personal injury caused by the supplier's negligence and except as otherwise specifically provided by law, where any work is defective for any reason, including negligence, the supplier's liability (if any) shall be limited to rectifying such defects or refunding any of the contract price paid and in any event shall not exceed the price of the goods.
- (c) The supplier shall not be held liable to the supplier in respect of:-
 - (i) any defect in the provision of the goods to the extent that such defect is due to a failure by the customer to comply with any of its obligations under the contract;
 - (ii) any defects in any of the products (including in their materials, manufacture or assembly) ultimately manufactured using any of the goods as a basis (whether or not the relevant manufacturer was recommended or suggested to the customer by the supplier);
 - (iii) any loss, damage or injury howsoever caused by the use of and/or defect in products ultimately manufactured using any of the goods as a basis (whether or not the relevant manufacturer was recommended or suggested to the customer by the supplier);
 - (iv) any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether or not caused by the negligence of the supplier) which arises out of or in connection with the provision of the goods or any use thereof by the customer.
- (d) Except as expressly provided in these Terms and Conditions, all warranties, conditions, representations, or other terms implied by statute or common law as to the quality of the goods or otherwise are excluded to the fullest extent permitted by law.
- (e) The customer hereby undertakes to indemnify the supplier against injury (including death) to any persons or loss of, or damage to, any property which may arise in connection with the contract out of the negligence of, or breach of the contract by, the customer or its sub-contractors, agents, employees or assignees and against all reasonable and legitimate claims, damages, costs and expenses whatsoever incurred in respect thereof or in relation thereto.

- (f) Both parties acknowledge and hereby agree that this clause 13 is in all respects fair and reasonable. Nothing in this contract shall be construed as limiting or excluding liability for death or personal injury caused by breach of duty by the supplier arising in the course of any business or the occupation of business premises by the supplier.

(14) Standing Material

- (a) Metal, film, formes, electronic files and other materials owned by the supplier and used by him in the production process and the like shall remain his exclusive property. Such items when supplied by the customer shall remain the customer's property unless modified by the supplier at the request of the customer.
- (b) Type may be distributed and lithographic, photogravure 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.

(15) Customer's Property

- (a) Except in the case of a customer who is not contracting in the course of a business nor holding himself out as doing so, customer's property and all property supplied to the supplier by or on behalf of the customer shall while it is in the possession of the supplier or in transit to or from the customer be deemed to be at the customer's risk unless otherwise agreed and the customer should insure accordingly.
- (b) The supplier shall be entitled to make a reasonable charge for the storage (and insuring if necessary) of any customer's property left with the supplier before receipt of the order. If for any reason the customer is unable to accept delivery of the goods at any time when the goods are due and ready for delivery, the supplier may at its sole discretion and without prejudice to its other rights store the goods at the risk of the customer and take all reasonable steps to safeguard and insure them at the cost of the customer. The supplier shall inform the customer thereof as soon as reasonable practicable.

(16) Materials Supplied by the Customer

- (a) The supplier may reject any paper, plates, electronic files or other materials supplied or specified by the customer which appear to him 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 supplier in ascertaining the unsuitability of the materials then that amount shall not be charged to the customer. The customer hereby indemnifies the supplier against any loss or damage the supplier may suffer to machinery or other equipment as a result of the materials supplied being unsuitable.
- (b) Where materials are so supplied or specified, the supplier 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.
- (c) Quantities of material supplied shall be adequate to cover normal spoilage.
- (d) Title to any materials supplied shall pass to the supplier at the point from which said materials have value added to them as a result of the actions of the supplier.

(17) Sealer Varnish

If a seal varnish is required to eliminate problems due to marking/scuffing, there will be an additional charge.

(18) Termination

- (a) If the customer ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, the supplier without prejudice to other remedies shall:-
 - (i) 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 him, and
 - (ii) in respect of all unpaid debts due from the customer have a general lien on all goods and property in his possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property in such manner and at such price as he thinks fit and to apply the proceeds towards such debts.
- (b) Subject to clause (a) above, in the event that the customer is in breach of the contract and provided that such breach is rectifiable, the customer shall have the opportunity to rectify such breach within 7 days of the occurrence of the breach. If the customer in breach fails to rectify the breach within the said 7 days, in addition to any other remedies available to the supplier under these Terms and Conditions or otherwise, the supplier shall be entitled to terminate the contract with immediate effect.
- (c) For the avoidance of doubt, if the customer fails to pay any sums due to the supplier by the due date for payment, in addition to any other remedies available to the supplier under these Terms and Conditions or otherwise, the supplier shall be entitled to terminate the contract with immediate effect.
- (d) In the case of a non-rectifiable breach of the contract, either party may terminate the contract with immediate effect.

- (e) Any termination of the contract howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

(19) Illegal Matter

The supplier shall not be required to print any matter which in his opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.

(20) Periodical Publications

A contract for the printing 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 is given in the case of other periodicals. Notice may be given at any time, but wherever possible should be given after completion of work on any one issue. Nevertheless the supplier may terminate any such contract forthwith should any sum due thereunder remain unpaid.

(21) Intellectual Property

- (a) Any artwork, designs, drawings or intellectual property rights which are created by the supplier and used in connection with any goods supplied shall remain the property of the supplier.
- (b) The customer shall save, indemnify, defend and hold harmless the supplier from any claims, losses, damages, costs, expenses, and liabilities of every kind and nature for, or arising out of any libellous matter or any infringement or alleged infringement of any intellectual property rights or copyright arising out of or in connection with the performance of the obligations of the supplier under the contract, where such performance has been in accordance with the instructions given to the supplier by the customer. For the avoidance of doubt, the indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.

(22) Force Majeure

The supplier shall be under no liability if he shall be unable to carry out any provision of the contract for any reason beyond his control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply or machinery, 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 supplier elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

(23) Law

These conditions and all other express terms of the contract shall be governed and construed in accordance with the laws of Scotland. Jurisdiction shall be prorogated to the Sheriffdom of Glasgow and Strathkelvin.

(24) Miscellaneous

- (a) These Terms and Conditions will be subject to variation upon notification by the supplier to the customer. Notification shall be given by the supplier displaying a notice on their sales invoices and sales statements for a period of three months from the date of variation.
- (b) The supplier may assign the contract under these Terms and Conditions with the customer or sub-contract the whole, or any part thereof, to any person, firm or company.
- (c) The customer shall not assign or transfer the contract under these Terms and Conditions or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the supplier.