

# Terms and Conditions

## 1 Definitions

- a. "Seller" means H&H Reeds Printers being the party providing the goods or services under these terms and conditions.
- b. "Buyer" means the party contracting with the Seller to acquire the goods and services supplied under these terms and conditions.
- c. "Work" means all goods (by way of intermediate or finished product) and services supplied by the Seller to the Buyer.
- d. "Intermediates" means all products produced during the manufacturing process including non-exhaustively discs, film, plate, intellectual property.
- e. "Preliminary Work" means all work done in the concept and preparatory stages (including non-exhaustively design, artwork, colour matching).
- f. "Electronic File" means any text, illustration or other matter supplied or produced by either Party in digitised form on disc, through a modem, or by ISDN or any other communication link.
- g. "Periodical Publications" means publications produced at (normally regular) intervals.
- h. "Insolvency" means the Buyer is in a position where it is unable to pay its debts or has a winding up petition issued against it or has a receiver, administrator or administrative receiver appointed to it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him.
- i. "Contract" means an order by the Buyer for goods and/or services to be supplied by the Seller and these terms and conditions.

## 2 Payment

- a. Estimates are based on the Seller's current costs of production and, unless otherwise agreed in writing, are subject to amendment to meet any rise or fall in such costs that have taken place by the time of delivery.
- b. Estimates are given exclusive of tax and the Seller reserves the right to charge and the Buyer will pay any VAT or other tax payable.
- c. All work carried out shall be charged. This includes all Preliminary Work whether or not the Buyer agrees to that work being taken forward to production.
- d. Any additional work required of the Seller by reason of the Buyer supplying additional instructions, variations, inadequate copy, incomplete or incorrect instructions or insufficient materials; or late delivery of the same shall be charged.
- e. Payment shall become due at the end of the month of the date on which the Seller submitted to the Buyer an invoice. The Seller, at his absolute discretion, may ask for part or full payment in advance of starting the Work.
- f. Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Seller for the Work or any debt owed on the relevant due date, the Seller may:
  - (i) claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 or any subsequent enactment; and
  - (ii) terminate the Contract or suspend all Work until payment has been made in full.
- g. Time for payment shall be of the essence of the Contract.
- h. No payment shall be deemed to have been received until the Seller has received cleared funds.
- i. All sums payable to the Seller under the Contract shall become due immediately on its termination, despite any other provision. This condition 2i is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- j. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- k. The Seller may, without prejudice to any other rights it may have, set off any liability of the Buyer to the Seller against any liability of the Seller to the Buyer.
- l. If Credit Facilities, in accordance with condition 3 of these terms and conditions, have been granted, payment is due by the end of the month following the month of Invoice.
- m. Unless otherwise agreed in writing by the Seller, the cost of delivery shall be charged extra.

- n. Should the Work be suspended or delayed by the Buyer for any reason the Seller shall be entitled to charge for storage and for loss of or wastage of resources that cannot otherwise be used.
- o. Should the suspension or delay in 2n above extend beyond 30 calendar days the Seller shall be entitled to immediate payment for work already carried out, materials specially ordered and any other additional costs.

## 3 Credit Facilities

Credit facilities may be granted to a Buyer who complete the Seller's credit account application form and who satisfy the Seller's criteria as set out from time to time. Where facilities are granted the Seller reserves the right to withdraw them at any time, without having to give reasons and, in such a case, all outstanding invoices become due and payable immediately.

## 4 Delivery

- a. Delivery of the Work shall be accepted when tendered.
- b. Any completion and/or delivery times specified by the Buyer are a guide only and, whilst the Seller will make every effort to adhere to proposed timescales, time is not of the essence in the Contract. If no dates are so specified, delivery shall be within a reasonable time.
- c. Unless otherwise agreed in writing, (in which case an extra charge may be made) delivery will be to kerbside at the Buyer's address and the Buyer will make arrangements for off-loading and for any additional transportation to its storage facility.
- d. Subject to any agreement as per 4(c) above, delivery involving difficult access and/or unreasonable distance from vehicular access shall entitle the Seller to make an extra charge to reflect its extra costs.
- e. Should expedited delivery be agreed the Seller shall be entitled to make an extra charge to cover any overtime or any other additional costs.
- f. Subject to the other provisions of these conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Work (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 calendar days.
- g. If for any reason the Buyer fails to accept delivery of any of the Work when they are ready for delivery, or the Seller is unable to deliver the Work on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
  - (i) risk in the Work shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);
  - (ii) the Work shall be deemed to have been delivered; and
  - (iii) the Seller may store goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- h. If the Seller delivers to the Buyer a quantity of goods of up to 5% more or less than the quantity accepted by the Seller, the Buyer shall not be entitled to object to or reject the goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- i. The Seller may deliver the Work by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- j. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment

## 5 Materials supplied or specified by the Buyer

- 5.1 Electronic Files
  - a. It is the Buyer's responsibility to maintain a copy of any original Electronic File provided by the Buyer.
  - b. The Seller shall not be responsible for checking the accuracy of supplied input from an electronic file unless otherwise agreed in writing.
  - c. Without prejudice to clause 5.2(b), if an electronic file is not suitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action the Seller may make a charge for any resulting additional cost incurred or may reject the file without prejudice to his rights to payment for work done/material purchased.

## 5.2 Other Materials

- a. Metal, film and other materials owned by the Buyer and supplied to the Seller for the production of type, plates, filmsetting, negatives, positives, electronic files and the like shall remain the Buyer's exclusive property. However where the content is generated by the Seller, the Seller may, in order to protect his intellectual property rights and at his absolute discretion, replace such material with unused material of a similar or better quality.
- b. The Seller may reject any film, discs, paper, plates, electronic files or other materials supplied or specified by the Buyer which appear to him to be unsuitable for the purpose intended. Additional cost incurred if materials are found 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 Seller in ascertaining the unsuitability of the materials then that amount shall not be charged to the Buyer.
- c. Without prejudice to clause 5.2.b, where materials are so supplied or specified, and the Seller so advises the Buyer, and the Buyer instructs the Seller in writing to proceed anyway, the Seller will use reasonable endeavours to secure the best results, but shall have no liability for the quality of the end-product(s).
- d. Quantities of materials supplied shall be adequate to cover normal spoilage. Any costs incurred as a result of shortages, including re-starting jobs, duplicating masters etc. will be charged in addition to the estimated price.

## 5.3 Risk and Storage

- a. The Seller shall be entitled to make a reasonable charge for the storage of any item left with the Seller.
- b. The Buyer confirms that all items stored with the Seller are the Buyer's own property, or that the person who owns or has an interest in them has given the Buyer irrevocable authority to store the items with the Seller on these terms and conditions, and that the Buyer acts as a duly authorised agent of any such person. The Buyer will pay any costs the Seller incurs or any claims made against the Seller if this is not true.
- c. The Buyer shall be responsible for ensuring that there is and maintaining adequate insurance cover for the items while they are in the possession of the Seller or in transit to or from the Buyer.
- d. The Seller has a right to refuse to permit the Buyer to store any items with the Seller at any time and has a right to require the Buyer at his own expense to collect any items stored with the Seller at any time.
- e. Should the Buyer fail to collect his items after 14 calendar days of the date of a written notice by the Seller requiring the Buyer to collect his items, the Seller is entitled to dispose of any of the Buyer's items on such terms as the Seller shall think fit and the Seller shall not be liable to the Buyer.
- f. Save for liability for physical injury to or the death of any person as a direct result of the negligence of the Seller, the Buyer shall indemnify the Seller in respect of any claim howsoever arising in relation to the storage or disposal of the Buyer's items in accordance with these terms and conditions.

## 5.4 Finished Goods

- a. The risk in the Work and all goods delivered in connection with the Work shall pass to the Buyer on delivery and the Buyer should insure accordingly.
- b. On completion of the Work, the Seller will store the Buyer's materials and Work for a maximum of one calendar month, after which time the Seller reserves the right to destroy the Work without further notice.

## 6 Materials and equipment supplied by the Seller

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

## 7 Retention of Title

- a. The Work remains the Seller's property until the Buyer has paid for it and discharged all other debts owing to the Seller.
- b. Until ownership of the Work has passed to the Buyer, the Buyer shall:
  - (i) hold the Work on a fiduciary basis as the Seller's bailee;
  - (ii) store the goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
  - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and maintain the goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- c. If the Buyer:
  - (i) becomes subject to Insolvency; or
  - (ii) the Work or all other debts owing to the Seller have not been paid for in full the Seller may take the goods back.
- d. The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or, where condition 7c above applies, to recover them.
- e. The Buyer shall sell the goods before they have been paid for in full he shall hold the proceeds of sale on trust for the Seller in a separate account until any sum owing to the Seller has been discharged from such proceeds.
- f. Where the Buyer is in breach of these terms and conditions or performs any act of Bankruptcy or Insolvency the Seller reserves the right to approach the Buyer's customer and to offer the Work directly to them, notwithstanding the fact that this will involve advising the Buyer's customer that the Buyer is in breach or in default.
- g. On termination of the Contract, howsoever caused, this condition 7 shall remain in effect.

## 8 Proofs and Variations

- a. The Seller shall incur no liability for any errors not corrected by the Buyer where the Buyer has been provided with proofs. The Buyer's alterations and additional proofs necessitated thereby shall be charged extra. When style, type or layout is left to the Seller's judgement, changes there from made by the Buyer shall be charged extra.
- b. Where the Buyer specifically waives any requirement to examine proofs the Seller is indemnified by the Buyer against any and all errors in the finished Work.
- c. 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.
- d. Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5 per cent for work being allowed for overs or unders the same to be charged or deducted at the pro rata Contract rate.

## 9 Claims and Liability

### THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

#### 9.1 Claims

- a. Advice of damage, delay or loss of goods in transit or of non-delivery must be given in writing to the Seller and the carrier within 3 calendar days of delivery (or, in the case of non-delivery, within 3 calendar days of notification of despatch of the goods) and any claim in respect thereof must be made in writing to the Seller and the carrier within 7 calendar days of delivery (or, in the case of non-delivery, within 7 calendar days of notification of despatch). All other claims must be made in writing to the Seller within 14 calendar days of delivery. The Seller shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Buyer proves that:
  - (i) it was not possible to comply with the requirements; and
  - (ii) the claim was made as soon as reasonably possible.
- b. If the Work is defective so that the Buyer may in law reject it, said rejection must take place within 7 calendar days of delivery of the goods, failing which the Buyer will be deemed to have accepted the Work.

- c. In the event of all or any claims or rejections the Seller reserves the right to inspect the Work within 7 calendar days of the claim or rejection being notified.

## 9.2 Liability

- a. This condition 9.2 sets out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Buyer in respect of:
- (i) any breach of the Contract;
  - (ii) any use made by the Buyer of the Work, the Preliminary Work, the Intermediates or any part of them; and
  - (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- b. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- c. Nothing in these conditions limits or excludes the liability of the Seller:
- (i) for death or personal injury resulting from negligence; or
  - (ii) for any liability incurred by the Buyer as a result of any breach by the Seller of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982; or
  - (iii) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
  - (iv) for any damage or liability incurred by the Buyer as a result of fraud or fraudulent misrepresentation by the Seller.
- d. Subject to conditions 9.2b and 9.2c above:
- (i) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (ii) the Seller shall not be liable to the Buyer for loss of profit, loss of business, depletion of goodwill, loss of anticipated savings, loss of goods, loss of contract, loss of use or loss of corruption of data or information, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- e. On termination of the Contract, howsoever caused, this condition 9.2 shall remain in effect.

## 10 Insolvency

Without prejudice to other remedies, if the Buyer becomes insolvent, the Seller shall have the right to terminate the Contract and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Buyer, such charge to be an immediate debt due to the Seller. In the event of the Buyer's insolvency any unpaid invoices shall become immediately due for payment by the Buyer to the Seller.

## 11 General Lien

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

## 12 Illegal Matter

- a. The Seller 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.
- b. The Seller shall be indemnified by the Buyer in respect of any claims, costs and expenses arising out of the printing by the Seller for the Buyer of any illegal or unlawful matter including matter which is libellous or infringes copyright, patent, design or any other proprietary or personal rights. The indemnity shall include (without limitation) any amounts paid on a lawyer's advice in settlement of any claim that any matter is libellous or such an infringement.

## 13 Periodical Publications

A contract for the printing of a periodical publication may not be terminated by either party unless 13 calendar weeks' notice in writing is given in the

case of periodicals produced monthly or more frequently or 26 calendar weeks' notice in writing is given in the case of periodicals produced less frequently than on a monthly basis.

## 14 Force Majeure

The Seller shall have no liability to the Buyer under the Contract if the Seller is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control including (without limiting the foregoing): acts of God, compliance with any law or governmental order, rule, regulation or direction, war or national emergency, acts of terrorism, protests, riot, civil commotion, malicious damage, fire, explosion, flood, storm, epidemic, accident, breakdown of plant or machinery, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 14 calendar days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract and the Buyer shall pay the Seller for work done and materials used up to that date.

## 15 Data Protection

The Buyer acknowledges and agrees that the Seller may transfer the Buyer's name, address and payment record to a credit reference agency, and personal data will be processed by and on behalf of the Seller.

## 16 Law

These conditions and all other express and implied terms of the contract shall be governed and construed in accordance with the laws of England and the parties agree to submit to the jurisdiction of the courts of England and Wales. On termination of the Contract, howsoever caused, condition 9.2 (Liability) and condition 16 (Law) shall remain in effect.

## 17 Notices

All specifications and notices relied on by either party and all variations to this agreement must be in writing and include a duly authorised signature.

## 18 Waiver

- a. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by the Seller in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- b. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 19 Severability

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.

## 20 Assignment

- a. The Seller may assign the Contract or any part of it to any person, firm or company.
- b. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

## 21 Rights of Third Parties

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.

## **THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

## 22 Right to Cancel

The Buyer shall have a period of 7 working days from the date of an order for services to cancel the Contract, unless the Buyer requests the Seller to begin the services before this period expires.