

Terms & Conditions

1. DEFINITIONS

- 1.1 "Company" means Corporate Mailing Solutions Ltd (Registered number: 3551953. Registered office: 3 Courthouse Close, Winslow, Bucks, MK18 3QH).
- 1.2 "Conditions" means the terms and conditions set out in this document and any special terms and conditions agreed in writing by the Company
- 1.3 "Completion Date" means the date or dates by which the Company has agreed to complete the Services
- 1.4 "Completion Period" means the period or periods during which the Company has agreed to undertake the Services
- 1.5 "Goods/Services" means the goods and/or services which the Customer agrees to buy from the Company in accordance with these Conditions
- 1.6 "Price" means the price or the Goods/Services excluding carriage packing insurance and value added tax
- 1.7 "Customer" means the person who accepts a quotation of the Company for the sale of the Goods/Services or whose order for the Goods/Services is accepted by the Company
- 1.8 "Specifications" means any artwork sketches specifications descriptions information other instruction supplied by the Customer or by any agent or representative of the Customer
- 1.9 "Contract" means the contract for the purchase and sale of the Goods/Services.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply to and be incorporated into the provisions of the Services and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing
- 2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the Company, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Company other than by a written acknowledgement issued and executed by the Company or (if earlier) by the Company starting to provide the Services when a contract for the supply and purchase of those Services on these Conditions will be established.
- 2.3 Quotations are given by the Company on the basis that no Contract shall come into existence except in accordance with condition 2.2. All quotations given by the Company are, unless otherwise agreed in writing, valid for a period of 30 days from the date of issue
- 2.4 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 2.5 No variation to these Conditions (including any special terms and conditions agreed between the parties) shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.

3. PRICE AND PAYMENTS

- 3.1 The Price shall be the Company's quoted price. The Price is exclusive of value added tax, which shall be due at the rate ruling on the date of the Company's invoice.
- 3.2 Payment of the Price and value added tax shall be due within 30 days of the date of the invoice and shall be paid in full without and deduction whatsoever.
- 3.3 The Customer may not withhold payment of any invoice or other amount due to the Company or any part thereof by reason of any right of set off or counterclaim, which the customer may have or allege to have, or for any reason whatsoever.
- 3.4 If the Customer fails to pay the Company on the due date, the Company may:
- (a) charge interest on overdue invoices, which shall accrue from the date when payment becomes due from day to day until the payment, at a rate of 6% above HSBC's base rate from time to time in force and shall accrue at such a rate after as well as before any judgement, and the Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) Suspend all services until payment has been made in full.

4. COMMENCEMENT AND DURATION

- 4.1 The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's offer in accordance with condition 2.2 and until the supply of the Services has been completed.
- 4.2 Where the Services are supplied by the Customer to the Company on an ongoing basis, the Services supplied shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other not less than 3 months' notice, unless the Contract is terminated in accordance with condition 11.

5. THE SERVICES

- 5.1 The nature and description of the Goods/Services shall be as set out in the Company's quotation and in any Specifications given by the Customer and accepted in writing by the Company.
- 5.2 The Customer shall be responsible for ensuring that specifications given in connection with the supply of the Goods/Services are accurate, unambiguous, clearly legible and that they meet the Customer's requirements and for giving the Company any necessary information relating to the goods/services within a sufficient time to enable the Company to perform the contract in accordance with its terms AND the Company shall not be liable for any loss, damages, costs or expenses incurred or suffered by the Customer arising (directly or indirectly) from any inaccuracy, ambiguity or illegibility of the Specifications or any failure by the Customer to give necessary information.
- 5.3.1 If proofs of work are submitted by the Company for the Customer's approval, the Company shall not incur any liability in respect of errors not corrected by the Customer.
- 5.3.2 The Company shall be entitled to make a reasonable additional charge for all work (including preparation of revised and additional proofs), which is necessary as a result of:
- (a) any corrections alterations or variations in the Specification made by the Customer;
- (b) any inaccuracies or ambiguity in the Specifications or if they are illegible
- (c) where the style type layout or artwork is left to the Company's judgement changes required by the Customer in the proofs thereof.
- 5.4 The Company may reject any paper plates or other materials supplied or specified by the Customer which appear to be unsuitable. Additional costs, incurred if materials are found to be unsuitable during production may be charged. 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.

6. COPYRIGHT AND MATERIAL

- 6.1 Metal film glass plastics and other materials supplied and owned by the Company and used by it in the production of type plates moulds stereotypes electrolytes film setting negatives positives computer disks and software and the like (the production processes) shall be and remain Company property.
- 6.2 Unless the Company shall have otherwise agreed in writing it shall be entitled to destroy efface or break-up the production processes used in connection with the Goods/Services immediately after the Goods/Services have been completed.
- 6.3 The Company shall be entitled to make a reasonable charge for the storage of any property of the Customer, which the Customer shall not have collected, from the Company (at the Customer's cost) within 48 hours after a request in writing from the Company to do so.

7. DELIVERY

- 7.1 The Company shall use all reasonable endeavours to undertake the Goods/Services during the Completion Period and by or on the Completion Date but time shall not be of the essence of the contract in respect of such Completion Period and Completion Date.
- 7.2 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform, any of the Company's obligations in relation to the Goods/Services if the delay or failure is due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 7.2.1 Act of God, explosion, flood, tempest fire or accident;
- 7.2.2 war or threat of war, sabotage, insurrection civil disturbance or requisition;
- 7.2.3 acts, restrictions regulations byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority
- 7.2.4 Strikes, lock out, or other industrial actions or trade disputes (whether involving employees of the Company, or of a third party);
- 7.2.5 Difficulties in obtaining raw material, labour, fuel, parts or machinery;
- 7.2.6 Power failure or breakdown in machinery
- 7.3 If any such event or circumstance as aforesaid make it impossible for the company to perform the Contract, the Company shall be entitled to cancel the contract without liability in which event it shall be entitled to make a reasonable charge for all work undertaken (whether completed or not) up to the cancellation
- 7.4.1 When the Goods are ready for delivery, the Company will give the Customer notice to collect the Goods. It is a condition of the Contract that the Customer will then collect the Goods, or give the Company instruction for their delivery within the seven days commencing with the day of service of that notice. If the Customer fails to collect or give instructions for delivering the Goods within that period the Company may exercise either of the following rights:
- 7.4.1.1 treat the failure to collect or give instructions for delivery of the Goods as a repudiation of the Contract and terminate the Contract with immediate effect; in which case the Company may also do any or all of the following:
- (a) dispose of the Goods as it thinks fit;
- (b) retain all payments made by the Customer prior to termination;
- (c) recover damages from the Customer in respect of (i) the costs of storing the Goods, (ii) the costs of arranging for their disposal, (iii) any other losses suffered as a result of the Customer's breach or as a result of termination of the Contract,
- 7.4.1.2 arrange for the storage of the Goods; in that case
- (a) the Goods shall be at the Customer's risk as regards to all loss or damage;

- (b) the Customer will be responsible for the costs of storing the Goods and will reimburse the Company all expenses incurred in connection with such storage;
- (c) the Customer will pay the Company a reasonable fee for its services in connection with the storage of the Goods.
- 7.4.2 If the Company agrees that the Goods shall be transported to some place other than its own premises for delivery, the following provisions apply:
- (a) the customer will make such arrangements for carriage as it thinks appropriate and the Company shall not be liable to the Customer in any way for the arrangements so made
- (b) the Customer will indemnify the Company against any costs or expenses the Company may incur in making those arrangements;
- (c) the Goods shall be treated as having been delivered to the Customer as soon as they are delivered to the carrier;
- (d) the Goods shall be at the Customer's risk from the moment they are delivered to the carrier
- 7.5 The Customer shall within 7 days of the arrival of each delivery of the Goods at the Customer premises, notify the Company in writing of any defect by reason of which the Customer alleges that the Goods delivered are not in accordance with the Company's written quotation or the written order of the Customer (as shall be the case) and the Specifications and which shall be apparent on reasonable inspection
- 7.6 If the Customer fails to give such a notice then, except in respect of any defect which is not one which should be apparent on reasonable inspection the Goods shall be conclusively presumed to be in all respects in accordance with the Company's quotation or the written order of the Customer (as shall be the case) and Specifications, and accordingly the Customers shall be deemed to have accepted the delivery of the Goods in question and the Company shall have no liability to the Customer with respect to that delivery.
- 7.7 If the Customer properly requests any Goods/Services then provided that the Company shall expeditiously replace, repeat or rectify such Goods/Services the Company shall not be liable for any direct loss and/or expense or indirect loss and/or expense suffered by the Customer or liabilities to third parties incurred by the customer

8. RISK & PROPERTY

- 8.1 Risk of damage to or loss of Goods shall pass to the Customer:
- 8.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or
- 8.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of the Contract, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods delivered to the Customer for which payment is then due.
- 8.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customers and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the Products in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored protected and insured.
- 8.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been re-sold), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 8.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

9. INSOLVENCY OR OTHER DEFAULT

- 9.1 If
- 9.1.1 The Customer shall make default in or commit any breach of any of its obligations to the Company (including but not limited to any failure to make payment of the Price or any interim payment or other sums payable by the Customer to the Company on the due date);
- 9.1.2 distress or execution shall be levied upon the Customer or its goods; or
- 9.1.3 an event of insolvency shall occur in relation to the Customer or (if the Customer shall comprise more than one party) anyone of them
- 9.1.4 the Customer or (if the Customer shall comprise more than one party (anyone of them ceases to trade or threatens to cease to trade - then all sums outstanding in respect to any Goods/Services supplied under any contracts made from time to time between the customer (or any subsidiary parent or associated company of the Customer and the Company shall be immediately payable to the Company and the Company shall have the right by notice in writing given to the Customer to suspend forthwith the provision of any further Goods/Services and to determine any unexecuted contract with the Customer without prejudice to any other remedy which the Company may have.
- 9.2 The expression "an event of insolvency" in clause 9.1.3 includes [in relation to a company or other corporation which is the Customer (or if the Customer shall comprise more than one party) or any one of them] inability of the company to pay its debts entry into liquidation either compulsory or voluntary (except for the purpose of amalgamation or reconstruction) the passing of a resolution for a creditors winding up, the making of a proposal to the company and its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, the application to the court for an administration order, and the appointment of a receiver or an administrative receiver and (in relation to a Customer who is an individual or, if the Customer is more than one individual, anyone of them) inability to pay or having no reasonable prospect of being able to pay his debts, the presentation of a bankruptcy petition, the making of a proposal to his creditors for a composition in satisfaction of his debts or a scheme of an arrangement of his affairs, the application to the court in respect of insolvency that the Customer be sequestrated or that the Customer be placed under the protection of the Insolvency Act 1986.

10. LIABILITY

- THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION
- a. This condition 10 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees and sub-contractors) to the Customer in respect of any breach of the Contract or any use made by the Customer of the Services, or any part of them and 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 are, to the fullest extent permitted by law, excluded from the Contract.
- c. Nothing in these Conditions limits or excludes the liability of the Company for death or personal injury resulting from negligence; or for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company.
- d. Subject to condition 10.b and condition 10.c
- i. the Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business depletion of goodwill and/or similar losses, or loss of contract, or loss of corruption of data or information, or, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- ii. the Company'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 price paid for the Services.

11. TERMINATION

- a. Subject to condition 11.c, the Contract shall terminate automatically on completion of the Services.
- b. Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than 3 months written notice or immediately if:
- i. the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- ii. an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- iii. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- iv. a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- v. the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- vi. the other party ceases, or threatens to cease, to trade; and
- vii. there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).
- c. On termination of the Contract for any reason:
- i. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12. GOVERNING LAW

- This contract shall be governed by and construed in all respects in accordance with English Law and the Customer hereby submits for all purposes of and in connection with this Contract to the exclusive jurisdiction of the English Courts.