

MARTIN'S THE PRINTERS LTD
TERMS OF PAYMENT AND CONDITIONS OF SALE

1 INTERPRETATION "Contract" means the document(s) which include or incorporate these Conditions and all other details relevant to the Work.

"Costs of Production" means the direct costs incurred by the Company in connection with the Work including but not being limited to costs of raw materials, labour, transport, freight and packing and power.

"Creative Work" means any sketches, copy, dummies and all preparatory work developed and furnished by the Company.

"Customer" means the person, firm or Company to whom the Work is supplied.

"Estimate" means a formal estimate for Work issued by a duly authorised person on behalf of the Company.

"Media" means all and any source materials and data including (but not limited to) magnetic tapes, discs, optical material, computer programs or other software and photographic or other material of whatever description.

"Parties" means the Company and the Customer.

"Production Schedule" means a written schedule issued by the Company setting out dates for completion of the stages of manufacture relevant to the Work.

"Proofs" means all documents and copies produced in advance of the main job whether for checking purposes or otherwise.

"Standing Material" means film, tapes (paper and magnetic, discs or other electronic media and other materials used in the production of film setting, negatives, positives, printing plates and the like.

"Work" means any goods or services supplied by or on behalf of the Company to the Customer, including materials specifically ordered and storage.

"Writing" includes telex, cable, facsimile transmission and comparable means of communication.

Any reference in these Conditions to any provision of a statute shall be construed as a reference to the provision as amended, re-enacted or extended at the relevant time. Where the context so admits any reference in these Conditions to the singular shall include the plural and vice versa and any reference to gender shall include the masculine and/or the feminine as the case may be. The headings in these Conditions and in any other Conditions agreed by the Company are for convenience only and shall not affect their interpretation.

2 APPLICATION These Conditions apply to all Work done by the Company for the Customer whether carried out after the Company's Estimate and Production Schedule procedures described in these Conditions have been duly followed, or otherwise and override any other terms or Conditions contained or referred to in the Customer's order, in correspondence or elsewhere or implied by trade, custom, practice or course of dealing unless such other terms have been specifically agreed to in Writing by a Director of the Company. Any provisions to the contrary in any document produced by the Customer are hereby excluded or extinguished.

An Estimate shall constitute an offer which is capable of being accepted by the Customer during the period for which the Estimate states it is open for acceptance (unless it is withdrawn before acceptance) and if no period is stated, for 60 days after the date on which it is issued. The time within which an Estimate may be accepted can be extended in writing if signed by a Director of the Company. No other oral or written indication of the basis on which any Work or materials may be supplied by the Company shall be such an offer capable of acceptance by the Customer. Once an Estimate has been accepted, a binding legal Contract shall come into force between the parties on the earlier of:-

- a) the agreement of a Production Schedule for the Work; or
- b) the start of any of the Work.

If no Production Schedule shall have been agreed by the time the Work was started, such reasonable Production Schedule as the Company may specify from the information available to it when the Work was started, shall be deemed to have been agreed.

The Customer's acceptance of an Estimate shall confirm its acceptance to these Conditions. The Company's employees or agents are not authorised to make any representations concerning the Company's Work unless confirmed by the Company in Writing. In entering into any Contract, the Customer acknowledges that it does not rely on and waives any claim for breach of such representations or warranties which are not so confirmed.

Any typographical, clerical or other error or omission in any sales literature, Estimate, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

Any request to the Company for the provision of Work whether oral or in Writing made by any representative of the Customer shall upon the Company's acceptance, whether express or implied, constitute an order to the Company. Unless expressly instructed in Writing to the contrary by the Customer, the Company is authorised to accept any instructions during the course of the Work from any representative of the Customer whether or not such instructions are given at the request and with the authority of the Customer. All instructions received by the Company for the provision of and during the course of the Work shall be binding on the Customer who will be responsible to the Company to pay for such Work.

The work is carried out and any Contract is made on the basis that the Company's Schedules of Spoilage Allowances applicable to the relevant type of Work current at the date of commencement of the various elements of the Work, will apply. Copies of the Spoilage Allowances Schedule can be obtained from the Company on application.

3 PRICE Estimates are based on setting copy as it is received and on the Company's Costs of Production current at the date of any Estimate. If no Estimate is given, the prices charged will be those current when the Work or the relevant parts of it is carried out. Unless otherwise agreed in Writing by a Director of the Company the prices shown in any Estimate are subject to amendment at any time in response to:-

- a) any of the circumstances described elsewhere in these Conditions;
- b) any rise or fall in the Company's Costs of Production;
- c) any request by the Customer to extend the period of any Estimate beyond its agreed validity date;
- d) any amendment to the Work which is requested by the Customer or which is, in the Company's discretion, reasonably necessary to achieve the product which the Customer understands the Customer requires;
- e) any amendment in the instructions to the Company (including any reduction in any agreed delivery period);
- f) any amendment to any originally agreed (or subsequently changed) Production Schedule;
- g) copy supplied differing from that which had been originally described and/or not being clear and legible;

- h) additional Work involved at the Company's discretion if Media or material supplied by the Customer and quoted for typesetting conversion are found to be unsuitable through no fault of the Company; or
- i) press delays awaiting approval.

Any amendment so made will include overtime working costs, where incurred, at the Company's discretion.

All prices and charges are, unless indicated to the contrary, exclusive of any applicable value added tax which the Customer shall be additionally liable to pay to the Company at the rate prevailing at the date of invoice.

All Work carried out at the Customer's request, whether experimentally or otherwise, shall be charged.

All Work (except for binding) will be charged and paid for at the rates which apply to the ordered quantities. Binding will be charged and paid for on the actual numbers produced within the tolerances given in clause 7 at the run on or run back rates specified in the Estimate or otherwise agreed between the Parties.

The Company shall be entitled to make a reasonable charge for the provision of any Work ordered by the Customer for which no payment or charging basis is set out in any Estimate, or otherwise agreed.

Overmatter produced but not used will be charged at the Company's typesetting rates current at the date of production.

If the Company reserves machinery time for any particular Work at the Customer's request and the Work is postponed at the Customer's request appropriate compensation shall be payable to the Company before the Customer shall be entitled to require the Company to continue the Work.

4 INVOICING AND TERMS OF PAYMENT The Company shall be entitled to invoice for the Work (or parts of it) in the circumstances described in an Estimate and the Company may also invoice the Customer for all uninvoiced Work done on the price basis set out in the Estimate and if none is applicable on the basis of the Company's standard charges for such Work from time to time or if none, a reasonable charge if and when:-

- a) Proofs are sent to the Customer and are not received back by the Company fully, clearly and accurately corrected within 60 days after despatch by the Company;
- b) the Customer requests the Company to stop all or some of the Work for a period (or periods) exceeding 30 days or the Work is otherwise delayed because of the default of the Customer or (without limiting the generality of sub-clause (c) persons for whom it is accountable;
- c) a sub-Contractor nominated by the Customer and/or for whose payment the Customer is responsible defaults in the proper and punctual performance of its obligations so that any programme of the Work is adversely affected.

Unless the Estimate specifies any other payment terms, terms of payment are strictly thirty (30) days net from the date of invoice. If the Customer fails to make payment in full on the due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-

- a) appropriate any payment made by the Customer to such of the Work (or Work undertaken under any other Contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- b) charge the Customer interest both before and after any judgement) on the amount unpaid, at the rate of three (3) per cent per annum above Midland Bank base rate from time to time until payment in full is made a part of a month being treated as a full month for the purposes of calculating interest; and
- c) charge the Customer for all costs incurred in the collection of any amount outstanding, including but without prejudice to the generality of the foregoing all agency fees, legal fees and Court costs.

5 PROOFS The Company will accept no responsibility in the event of the Customer failing to correct errors in proofs or to notify the Company forthwith of any adverse results of Media tests. Any changes in the Work which the Customer makes may incur the Customer in additional charges and/or delays in Production Schedules. The Company excludes all liability of whatever kind in respect of such delays and/or changes. When style, typeface or layout is left to the Company's judgement, changes therefrom made by the Customer shall be charged extra at the Company's standard costs in force from time to time. Unless otherwise agreed, Proofs will be produced in black only. Extra charges will be made for colour Proofs. Because of differences in equipment, processing, proofing substrates, paper, inks, pigments and other Conditions between colour proofing and production pressroom operations a reasonable variation in colour between colour Proofs and the completed job shall constitute acceptable performance by the Company.

6 DELIVERY The Company shall use its reasonable endeavours to meet delivery dates but unless otherwise agreed in Writing, time shall not be of the essence of the Contract. In no circumstances shall the Company be liable for any delay in transit, however caused.

Unless otherwise specified, the Contract price is for a single delivery, without storage, to the Customer's address as set out in the Estimate. All Contracts are based on a continuous and uninterrupted delivery of the complete order unless the original specification distinctly states otherwise. Further charges may be made to cover the extra costs involved for subsequent deliveries to the first address and/or additional deliveries any other address or addresses. Courier or similar charges related to deliveries of material from the Customer to the Company or from the Customer's supplier to the Company are not included in the Contract price unless expressly specified. Special priority collections or deliveries will be provided at current rates upon the Customer's request.

If the Customer or any addressee designated by the Customer fails to take delivery of any Work or fails to give the Company adequate delivery instructions then without prejudice to any other right or remedy available to the Company the Company may store the Work until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage. If expedited delivery is made an extra charge will be made in relation to overtime working and other additional costs.

7 VARIATIONS IN QUANTITY Every reasonable endeavour will be made to deliver the quantity ordered but the Company shall be entitled to deliver 12 per cent (more or less) for printed material in one colour only and 12.5 per cent (more or less) for all other Work on production runs of 2,000 or fewer copies. On production runs of more than 2,000 copies, the relevant margins shall be five (5) per cent for printed material in one colour only and ten (10) per cent for all other Work. If the Customer requires guaranteed minimum quantities the percentage on chargeable variances on delivered quantities must be doubled.

8 CLAIMS Claims for defects, damages or shortages to or in the Work must be made by the Customer in Writing to the Company and any carrier within three clear days after delivery of all or any part of the Work. Queries on invoices must be made in Writing within fifteen (15) days of receipt of the invoice. Claims involving non-delivery must be made within 7 days after the date of any despatch note sent by the Company to the Client in respect of the Work. Failure to make such claim within the stated period shall constitute irrevocable acceptance and an admission that the Work fully complies with all terms, Conditions and specifications.

9 LIABILITY The Company will, at its option, refund up to 25 per cent of the original published price of copies containing imperfections which are the sole responsibility of the Company or rectify the imperfections. The payment or rectification shall satisfy any claims the Customer may have or claim against the Company in relation to the imperfections. This undertaking lapses 1 year after printing. This paragraph does not apply to Periodical Publications.

Where the Work includes casting-off the probable number of pages of good regular typescript and this is delivered by the Company to an accuracy of 10 per cent or less, the Company shall be entitled to charge the Customer on the basis of the actual number of pages (and revise its Estimate) for all stages of the Work and the Customer shall pay the Company's charges on such revised basis.

Except in relation to Contracts with persons dealing as consumers (within the meaning of the Unfair Contract Terms Act 1977) all representations, guarantees, undertakings, Conditions and warranties, whether express or implied by statute or common law or otherwise are excluded from this Contract to the fullest extent permitted by law.

In no circumstances shall the Company be under any liability for negligence or otherwise howsoever in respect of any advice given to the Customer.

Without prejudice to the foregoing:-

i) the Company shall in no circumstances be liable for incidental or consequential loss (including without limitation loss of profits of production) suffered by the Customer or otherwise; and

ii) the Company shall in no circumstances be liable for any loss or damage in excess of the invoice price of any Work or any part thereof in respect of which a claim is made.

Nothing herein contained shall exclude or restrict any liability for death or bodily injury caused by the Company or persons for whom it is accountable. Any property of the Customer and all property supplied to the Company by, on behalf or at the discretion of the Customer which, in connection with the Contract, is at premises of or used by the Company or Subcontractors of the Company or which is in transit between any of those premises at different locations or in transit between the Customer and the Company remains at the sole risk of the Customer at all times and the Customer is advised to take out and maintain suitable insurance in respect thereof.

Any question or difference which may arise between the Company and the Customer concerning the quality of the Work shall be referred to a single arbitrator to be agreed between the Parties. Failing such agreement within 30 days of the request by one party to the other that a matter be referred to arbitration in accordance with this clause such reference shall be to an arbitrator appointed by the President for the time being of the SPIF. The decision of such arbitrator shall be final and binding on the Parties. Any reference under this clause shall be deemed to be a reference to arbitration within the meaning of the Arbitration Acts 1950 and 1979.

The parties recognise that it is the obligation of the Company to reproduce the image supplied to them and not to detect or notify the Customer of errors or omissions in that image. When sheets are supplied to the Company for trade binding it is not expected to, nor will it, check the sheets for defects relating to content, print quality or paper.

10 STANDING MATERIAL All Standing Material owned by the Company shall remain its exclusive property and will not be released to the Customer or its agents. Duplicate copies of Standing Material can be prepared at the Customer's request and a charge will be made for this service. Standing Material supplied by the Customer shall remain the Customer's property and shall be used and stored by the Company at the Customer's risk. Printing plates, discs and files or other Work may be effected immediately after the order is executed unless written arrangements are made to the contrary, if they are, the Company shall be entitled to charge a reasonable rent.

11 CUSTOMER'S PROPERTY The Customer shall insure all Work against risk of loss or damage with effect from the earlier of the date of any invoice, or any despatch note or advice note accompanying any Work which is issued in relation to all (or any) of the Work.

The Company shall be entitled to charge the Customer according to the Company's Standard Schedule of Storage Charges (a copy of which is available on request) for the storage of any Customer's property left with the Company before receipt of order or after notification to the Customer of completion of the Work.

The Company reserves the right to dispose of or destroy any of the Customer's property for which rent is unpaid without further reference to the Customer and at the Customer's risk and expense.

The Company only undertakes to make such arrangements (including without limitation computer processing, creation of backup and operation methods) to keep secure and confidential all Media deposited with it by the Customer as may be agreed and specified by the Company in Writing in the Contract. In any event the Customer shall take security copies of any Media before it is delivered to the Company.

12 MATERIALS SUPPLIED BY THE CUSTOMER Materials received from the Customer or his suppliers shall be verified with delivery note as to cartons, packages or items shown only. The accuracy of quantities indicated on such notes and the quality and/or suitability of the goods for use in the Work in many cases cannot be determined from the notes alone and the Company cannot accept liability for variations in final delivered quantities referable to these factors. In no circumstances shall the Company be liable for any variations in quantities or loss of any materials received from the Customer which are not verified by a delivery note.

The Company may reject any paper, plates or other materials supplied or specified by the Customer which appear to it to be unsuitable. Additional costs incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional costs 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. Where materials are so supplied or specified, the Company will take every reasonable care to secure the best results but responsibility will not be accepted for imperfect Work caused by defects in or unsuitability of materials supplied or specified. Quantities of materials supplied shall be adequate to cover normal printer's wastage and/or spoilage. .

13 RISK AND TITLE Risk of damage to or loss of Work shall pass to the Customer:-

- a) in the case of Work to be delivered at the Company's or its agent's premises at the time when the Company notifies the Customer that the Work is available for collection; or
- b) in the case of Work to be delivered otherwise than at the Company's or its agent's premises, at the time of delivery or if the Customer or its designated addressee wrongfully fails to take delivery of the Work, the time when the Company has tendered delivery of the Work. (For the purpose of this sub-clause in the event of the Company sending Work to the Customer or his designated addressee, delivery of the Work to the carrier for the purpose of such transmission is deemed to be a delivery of the Work to the Customer or his designated addressee); or
- c) in either case, if either, when an invoice for any Work shall have been delivered to the Customer.

Notwithstanding delivery and the passing of risk in the Work, or any other provision of these Conditions, the property in the Work shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Work together with any other amounts (including rent and storage charges) payable pursuant to the Contract.

To the extent to which the Work or part of it shall have been delivered to the Customer or its agent and until such time as the property in the Work passes to the Customer, the Customer shall hold the Work as the Company's fiduciary agent and bailee and:-

- a) shall keep the Work separate from other goods of the Customer and third parties and properly stored, protected and insured and identified as the Company's property;
- b) (provided the Work is still in existence and has not been resold to a bona fide purchaser for value without notice of the Company's property in the Work) the Company shall be entitled at any time to require the Customer to deliver up the Work 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 Work is stored and repossess the Work.

Until the property in the Work shall have passed to the Customer it shall be entitled to use the Work in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Work whether tangible or intangible, including insurance proceeds and shall keep all such proceeds properly stored, protected and insured.

The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Work which remains the property of the Company but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

14 ILLEGAL MATTER The Company may refuse to supply or continue to supply any Work if in its opinion the content of the Work (or part of it) is offensive and/or to do so would be likely to result in civil or criminal proceedings against it. Any Work seized or ordered to be destroyed or made the subject of any injunction shall thereupon be deemed to have been delivered to the Customer and the Company shall be paid for the same and for all other Work carried out on or before the date of such seizure order or injunction as if so delivered.

15 PERIODICAL PUBLICATIONS A Contract for the printing of a periodical publication may not be terminated by either party unless thirteen (13) weeks' notice in Writing is given in the case of periodicals produced monthly or more frequently or twenty-six (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 the completion of Work on any one issue. In the event of a claim from the Customer for defective Work, the Company's liability is limited to the production cost of the defective Work. Save where specified to the contrary, the other provisions of these Conditions apply to periodical publications as they do to all other Work.

16 CREATIVE WORK Creative Work shall remain the Company's exclusive property and no use of it shall be made, nor any ideas obtained therefrom be used, except upon reasonable compensation to be determined by the Company.

17 INDEMNITY If any claim is made against the Company that any Work infringes or that its use or resale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person or contains any illegal or libellous or offensive content, the Customer shall indemnify the Company against all loss, damage, costs and expenses awarded against or incurred by the Company in connection with the claim, or paid or agreed to be paid by the Company in settlement of the claim and in such respect the Customer irrevocably agrees that:-

- a) the Company or its insurers (or their agents) is given full control of any proceedings or negotiations in connection with any such claim if they so require; and
- b) the Customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations; and
- c) the Customer shall do nothing which would or might vitiate any policy of insurance cover which the Customer may have in relation to any such claim and in the event of the Customer recovering any sums under any such policy or cover (which the Customer shall use its best endeavours to do), the Customer shall apply such sums towards discharging its liability to the Company under the terms of this indemnity; and
- d) without prejudice to any duty of the Customer at common law, the Company shall be entitled to require the Customer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damage, costs or expenses for which the Customer is liable to indemnify the Company under this clause.

18 TERMINATION Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the Contract forthwith and/or suspend any further deliveries under the Contract and/or to do no further Work without any liability to the Customer and/or exercise the lien referred to in this condition upon the happening of one or more of the following events :-

- a) the Customer fails to make in full any payment to the Company (whether in respect of the Work, or otherwise) within seven days of its due date or to remedy any other breach under this or any other Contract between the Company and the Customer forthwith upon being so required in Writing; or
- b) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- c) an encumbrance takes possession or a receiver is appointed of any of the property of assets of the Customer; or
- d) the Customer ceases to or threatens to cease to carry on business; or
- e) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

Termination of this Contract under this or any other clause shall not prejudice any other rights or remedies available to either party howsoever arising. The Company shall have a general lien on all Work and any other property of the Customer in the Company's possession or under its control (whether worked on or not) and shall be entitled on the expiration of fourteen (14) days' notice to dispose of such goods or property in such manner and at such prices as the Company deems appropriate and to apply the proceeds of sales towards any amounts payable to the Company by the Customer pursuant to the Contract. The Customer hereby grants to the Company and its agents such licences, consents, authorities and permissions as may be required to enable the Company lawfully and properly to execute such lien disposal to proceed and if the Customer is not competent to grant them it will procure that they are granted to the Company on such terms as the Company may reasonably require before the end of the notice period. The Customer shall indemnify and keep indemnified the Company and its agents against all and any loss, cost, expense, claim action or liability whatsoever they may suffer or incur by reason of any breach by the Customer of its obligations hereunder.

19 SUB-CONTRACTORS The Company may at its sole and absolute discretion, sub-Contract any or all of its obligations but shall remain liable to the Customer therefor.

20 FORCE MAJEURE The Company shall be under no liability if it shall be unable to carry out any provisions of the Contract for any reason beyond its reasonable control including (without prejudice to the generality of the foregoing) act of God, legislation, war, fire, flood, drought, explosion, accident, sabotage, civil disturbance, failure of power supply, lockout, strike or other action taken by employees in contemplation of furtherance of a dispute or owing to any inability to procure materials required for the performance of the Contract. If such contingency continues for a period of thirty (30) days or more either party may by written notice to the other elect to terminate the Contract and in such event the Customer shall pay for Work done and materials used but subject thereto shall otherwise accept delivery when available.

21 GENERAL

- a) Any notice, consent, invoice or other communication to be given hereunder by either party to the other may be served at the address of the other party as set out in the Contract or (if different) its Registered Office and in the event of being served by pre-paid first class letter shall be deemed to have been received forty-eight (48) hours from the time of posting.
- b) No waiver by the Company of any breach of the Contract by the Customer shall be considered as waiver of any subsequent breach of the same or any other provision.
- c) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- d) The headings to these Conditions are for convenience only and do not affect their interpretation.
- e) This Contract shall be governed and construed in accordance with the laws of England.