

TERMS AND CONDITIONS

1 Definitions

In these Conditions: "Company" means Bemrose Booth Paragon Limited; "Customer" means the person(s), firm or company who purchase the Goods or services from the Company; "Contract" means any contract between the Company and the Customer for the sale and purchase of the Goods and/or provisions of services incorporating these Conditions; "Goods" and "services" means respectively any goods or services agreed in the Contract to be supplied to the Customer by the Company.

2 Formation

Unless a variation is expressly agreed in writing by a duly authorised signatory of the Company the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply or refer to under any purchase order, confirmation of order or other document). Each order for Goods or services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods or services subject to these Conditions but no order placed by the Customer shall be deemed to be accepted by the Company or binding on the Company until a written acceptance of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer or commences performance of the services.

3 Services

Save where agreed otherwise in writing, the charges for any services agreed by the Company to be supplied to the Customer under the Contract (such as design services, consultancy services or otherwise) shall be calculated against the Company's standard charges from time to time and charged in addition to the price of the Goods. The Company may invoice such charges immediately upon provision of the relevant services to the Customer.

4 Cancellation

Save as provided in conditions 18 and 19 the Contract may not be cancelled (in whole or in part) except by agreement in writing and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from said cancellation.

5 Proofs

5.1 The Company will produce a first proof of the Goods before their manufacture based on the specification agreed between the Company and the Customer when the Contract was entered into (the "Specification"). The Company shall not be obliged to make any alterations to the first proof where such alteration deviates in any respect from the Specification. If the price of the Goods is less than £500 then the price does not include the cost of producing a first proof, and such costs shall be calculated against the Company's standard charges from time to time and added to the price of the Goods. The Company at its sole discretion may produce further proofs of the Goods and in all cases the cost of producing such further proofs shall be calculated against the Company's standard charges from time to time and added to the price of the Goods. Notwithstanding any other provision hereof, the Company shall not be responsible for errors in proofs (or for errors in produced Goods which reflect such errors in the relevant proofs) which have been approved by the Customer.

5.2 Due to differences in equipment, paper, inks and other conditions between the proofing stage and production runs for the Goods, a reasonable variation in colour between colour proofs and the manufactured Goods is acceptable unless otherwise agreed.

6 Machine Readable Codes

6.1 In the case of machine readable codes or symbols the Company shall print the same according to the Specification in accordance with generally accepted standards and procedures in the printing industry.

6.2 The Customer shall be responsible for ensuring that such codes or symbols will be read correctly by the equipment with which the Goods are intended to be used.

6.3 The Company shall not be liable to the Customer for, and the Customer shall fully indemnify and keep indemnified the Company against, any claim by any party resulting from such codes or symbols not reading or not reading correctly for any reason, except to the extent that such claim arises from any failure of the Company to comply with condition 6.1 above where such failure falls outside the tolerances generally accepted in the printing industry for printing of the sort under the Contract.

7 Standing Material

7.1 Any metal, film, tapes, computer programs (including all source code therein) and other materials (including any intellectual property rights therein) owned by the Company and used by it in production of type, plates, film, setting, negatives, positives and the like shall remain its exclusive property.

7.2 Type may be distributed and lithographic or photogravure film, tapes, disks or other work effaced immediately after the Contract is executed unless otherwise agreed in writing.

7.3 The Company shall not be required to download any electronic or digital data from its equipment or supply the same to the Customer on disk, tape, or by any communication link unless otherwise agreed in writing.

8 Variations in Quantity

8.1 If the Company delivers to the Customer a quantity of Goods of up to 5% (in relation to single colour Goods) or up to 10% (in relation to multi-colour Goods) more or less than the quantity required in the order accepted by the Company pursuant to condition 2 then the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and the price for such Goods shall be the pro rata Contract price.

9 Cost Variation

9.1 Price quotes for the Goods are based on the then current costs of production and delivery and are subject to amendment by the Company on or at any time after the Contract is formed in order to meet any rise in such costs.

9.2 The Company shall be entitled to add to the price of the Goods an extra charge (calculated against the Company's standard charges from time to time):

- to cover any additional work involved where information, copy, or electronic or digital data (whether supplied on disk or via any data transmission) is not clear and legible or does not conform to the Company's reasonable specifications or is not suitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action; and/or
- where the Customer has failed to supply within the time agreed with the Company information, data, proofs or any other materials or documentation required by the Company to carry out its obligations under the Contract; and/or
- in respect of increased costs arising out of a change requested by the Customer and accepted by the Company to the Specification of the Goods (but the Company shall not be obliged to accept such requested changes).

10 Delivery

10.1 Any delivery dates quoted for the despatch or delivery of goods or performance of services are approximate only and are not of the essence (and may not be made so by notice) and further are subject to the performance by the Customer of its obligations under the Contract. If no dates are specified, delivery or performance (as the case may be) will be made within a reasonable time.

10.2 Unless otherwise agreed in writing, the price does not include delivery to the address specified in the Customer's order or any other address and in any event unless the price quoted expressly includes cost of delivery to the Customer's designated premises, delivery shall be ex-works (Incoterms 2001 from the Company's premises at Derby, Hull or Thornaby or such other premises in the United Kingdom as the Company may designate from time to time. If and insofar as the parties agree that the price includes cost of delivery (and insurance) to an agreed destination the Company reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery.

10.3 Where the parties have agreed that the price includes delivery of the goods to the agreed Customer's premises the Company shall prior to the despatch of the Goods notify the Customer of the third party responsible for carrying the Goods and the level of insurance cover provided by such third party for amongst other things loss in transit. If prior to despatch the Customer shall not have objected to the identity of such third party the Company will be entitled to assume the third party nominated by it is acceptable. The Customer shall be entitled to require that the Company use an alternative means of delivering the Goods but the Company shall be entitled to charge additional amounts in respect of such alternative method of delivery. Without prejudice to clause 15.5 the Company shall have no liability to the Customer in respect of Goods lost or damaged during delivery to the Customer over and above that which it successfully recovers under the insurance of such third party as previously notified to the Customer.

10.4 Where the price quoted is for delivery of the Goods ex-works the Customer shall be responsible for arranging carriage of the Goods and for insurance of the Goods during transit.

11 Risk

Subject only to 10.3 above, the Goods are at the risk of the Customer from the time of delivery. Where the price for the Goods does not expressly include the cost of delivery, then delivery shall occur when the Company notifies the Customer that the Goods are available for collection. Where the price expressly includes the cost of delivery, delivery shall be deemed to occur when the Goods are collected by the third party carrier in question, or as the case may be, when loaded onto the relevant vehicle for despatch.

12 Call off delivery

12.1 Where the Contract involves the storage of the Goods by the Company prior to distribution to the Customer, the following provisions shall apply:

- The premises for storage shall be as agreed at the time the Contract is entered into and delivery shall take place when the Goods arrive at those premises; and
- The Company shall be entitled to invoice the Customer the price for all of the Goods at the time of delivery. The Company shall in addition be entitled to submit monthly invoices for storage costs. The Company shall invoice the Customer in addition for its costs of transporting the Goods or any part of them from the place of storage to an agreed destination immediately upon despatch from the place of storage.

12.2 For the avoidance of doubt and for the purposes of condition 12.1, risk in the Goods passes to the Customer upon delivery as set out in 12.1.(a).

13 Terms Of Payment

13.1 The Customer shall pay the price for the Goods (and any other costs payable by it under the Contract) without any set off or deduction within 30 days of the date of the Company's invoice. Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.

13.2 The Company reserves the right to charge interest (both before and after judgment) at a rate of 4% over the base rate from time to time of HBOS plc, accruing on a daily basis, on all payments which have not been made by the due date until payment is made in full.

13.3 Any discount stated on the invoice or otherwise given by the Company shall be deemed to have been withdrawn immediately upon any payment not being received by the Company within the payment period stipulated for such discount.

13.4 The price of the Goods and any other costs chargeable by the Company hereunder is exclusive of value added tax, which shall be charged in addition at its applicable rate from time to time.

14 Retention of Title

14.1 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Customer on any account.

14.2 Until property in the goods has passed to the Customer the Customer shall:

- hold the goods on a fiduciary basis as the Company's bailee; and
- store the goods separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property.

14.3 The Customer grants to the Company and its agents an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or for recovery of them.

14.4 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

15 Warranty and Liability

15.1 The Company warrants (subject to the other provisions of these Conditions including without limitation conditions 5.1 and 5.2) that any services supplied by it have been performed with reasonable skill and care and that the Goods supplied to the Customer shall at the time of delivery materially comply with the Specification and be free from material defects in workmanship and materials. All other warranties, conditions and other terms implied by statute or common law (save for the conditions as to title implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

15.2 The Company shall not be liable for any claims arising under or from defects, damage, delay or non-delivery of Goods unless made in writing to the Company within 3 days of delivery (save in the case of latent defects which the Customer could not have discovered on inspection, in which case the claim must be made as soon as practicable following the customer becoming aware of the same or, if earlier, from when the Customer ought reasonably to have become aware of the same) or, for claims for delay or non-delivery of Goods, 14 days from the date of the Company's invoice relating to those Goods. Any such liability of the Company shall be limited at the Company's option to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract price for such Goods against any invoice raised by the Company.

15.3 Subject to 15.6 below, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising under or in connection with the performance or contemplated performance of the Contract shall be limited to the price payable to the Company under the Contract in respect of the Goods or services to which such liability relates.

15.4 Subject to 15.6 below, the Company shall not be liable to the Customer for any indirect or consequential losses, or for losses of profit, revenue, business, goodwill or anticipated savings.

15.5 The Company shall not be liable in respect of any defects arising from the Company producing the Goods or supplying services in accordance with the Specification or any other specification supplied by, or directions as to performance received from, the Customer or where any Goods or work supplied is of a similar quality and standard as sample proofs or specifications for the Goods or work previously supplied by the Company and accepted or approved by the Customer. Any samples proofs or specifications can be accepted by express confirmation (and the signing by the Customer of such samples proofs or specifications shall be conclusive evidence of acceptance) or deemed accepted if they are not rejected by the Customer within 24 hours of the supply of such sample proofs or specifications to the Customer.

15.6 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or liability for fraudulent misrepresentation.

16 Customer's Property and Property Supplied

16.1 Customer's property and all property supplied by or on behalf of the Customer to the Company ("Customer's Property") will be held at the Customer's risk and the Company shall not be liable to the Customer for any defects in Goods or services caused by defects in or unsuitability of the Customer's Property.

16.2 The Customer shall ensure that Customer Property in the form of data, information, material or documentation supplied electronically or in hard copy is complete and accurate and will maintain its own copy thereof.

16.3 The Customer warrants to the Company that it has the right and title to provide the Customer's Property to the Company and authorise its use by the Company.

16.4 The Customer shall fully indemnify and keep indemnified the Company from and against all costs (including legal costs), claims, demands, expenses and all liability whatsoever which may be made against or incurred by the Company or which the Company may sustain, pay or incur arising out of the use by the Company of the Customer's Property.

17 Illegal Matter

17.1 The Company shall, without any liability to the Customer, be entitled to refuse to print any matter in whole or in part which is deemed by the Company to be an illegal or defamatory nature or is an infringement or potential infringement of the intellectual property or other rights of any third party or which the Company otherwise reasonably deems is unsuitable.

17.2 The Customer shall fully indemnify and keep indemnified the Company in respect of any losses, claims, costs and expenses (including legal costs and costs of enforcement) arising out of:

- any actual or alleged defamatory or illegal matter or any infringement or potential or alleged infringement of third party intellectual property rights or of any other proprietary or personal rights contained in any material printed for or requested to be printed for the Customer; or
- any other action or claim in respect of the content or layout of any Goods printed, insofar as such content or layout was provided or determined by the Customer.

18 Force Majeure

18.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, 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 refusal in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract forthwith.

19 Default or Insolvency

19.1 If the Customer shall be in breach of any of its obligations under the Contract or, being a company, becomes subject to any voluntary arrangement or is unable to pay its debts as they become due or has a receiver, manager, administrator or administrative receiver appointed over any of its assets or undertakings or income or has passed a resolution for its winding up or has a petition presented to any Court for its winding up or for an administration order or, being an individual, partnership or firm has entered into any composition or arrangement with its creditors or has a bankruptcy petition or order issued or made against it or has an interim receiver appointed in respect of its property then the Company without prejudice to its other remedies shall:

- have the right by immediate written notice to determine (or suspend performance or delivery under), wholly or in part, the Contract and shall be entitled to charge for work already completed or not and materials purchased in relation to the Contract, such charges to be an immediate debt due to the Company;
- in respect of all unpaid debts due from the Customer, have a general lien on all Customer Property in its possession and shall be entitled on the expiration of 14 days notice to dispose of in such manner and at such price as it thinks fit and to apply the proceeds towards such debts.

20 Assignment and Sub-contracting

The Company may assign its right and obligations under the Contract or any part of it to any person, firm or company or subcontract any of its obligations under the Contract to a third party. The Customer may not assign the Contract or any part of it without the Company's prior written consent.

21 Severability

If any of these Conditions 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, unenforceability or unreasonableness be deemed severable and the conditions that remain shall continue in full force and effect.

22 Law of Contract

The Contract shall in all respects be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.