

## GENERAL CONDITIONS OF TRADE

### DEFINITIONS

1. 'the Company' shall mean 4DM Limited.
- 'Goods' shall mean the work and materials to be produced or the work to be carried out by the Company as the case may be pursuant to this contract.
- 'Customer' shall mean the party that has placed the order for the goods.

Reference to the Company and the parties hereto shall include their respective successors in title to substantially the whole of their respective undertakings.

### 2. GENERAL

No terms, conditions or representations express or implied other than those expressly embodied in these terms and conditions shall be binding on the Company or the customer. The Company shall provide and the customer shall purchase the goods in accordance with these conditions which shall govern each and every transaction, contract and order between the Company and the customer to the exclusion of any other terms and conditions the subject of which any quotation is accepted or any order is made or is purported to be accepted or made by the customer save and except where such other terms and conditions shall be accepted in writing by a Director of the Company.

### 3. ACCEPTANCE OF ORDER

- (a) Subject to (b) below No contract shall exist until the Company has despatched its acceptance of order form ("the Acceptance") to the customer.
- (b) Where the acceptance is stated by the Company to be 'Subject to Scheduling' no contract shall exist until the Company and the customer have agreed the time for delivery of the goods in writing.
- (c) All quotations given by the Company are invitations to treat and are checked prior to their submission to the customer. Errors or omissions may occasionally occur and in the event of a mistake (for example, interpretation, calculation or typing) coming to light on receipt of an order, the Company shall submit an amended quotation for the customer's consideration.

### 4. SUB-CONTRACTING AND ASSIGNMENT

- (a) The Company may without the consent of the customer sub-contract any or all of its rights and obligations hereunder.
- (b) The Company may without the consent of the customer assign the benefit and burden of its rights and obligations hereunder. No notice of such assignments need to be given to the customer.

### 5.0 AGENCY

The customer shall contract as principal unless the customer discloses in writing both that it is acting as agent and the identity of the principal before the despatch by the Company of the acceptance. The customer shall remain liable under this contract unless the Company acting by a Director shall agree otherwise in writing. Where such written agreement is obtained it shall be presumed by the Company that the customer is fully authorised to act on behalf of its principal and that the principal shall be contractually liable on this contract. The customer will forward any invoices to the principal within seven days of receipt.

### 6. PRICES AND CHARGES

- (a) All prices and charges are based on the Company's current costs of manufacture and production, including materials and overheads, and are (except where expressly agreed otherwise in writing by a Director of the Company) subject to increase or decrease by the Company from time to time to take into account any rise in such costs and overheads before manufacture and delivery.
- (b) All charges authorised by this contract and not specifically stated shall be at the Company's standard rates from time to time.
- (c) The contract price excludes Value Added Tax or any other tax or duty payable. The amount of such taxes or duties shall be added to the contract price and shall be payable by the customer in the same manner as the contract price.
- (d) If as a result of any default by the customer or of any delay in the supply to the Company of any copy or information or materials or of the supply to the Company of faulty or substandard copy or materials or faulty direct input, it shall in the opinion of the Company become necessary in order to meet delivery dates to employ some or all of the Company's employees at overtime rates or incur other additional costs, or if expedited delivery shall be required by the customer with the like results, thereupon the Company shall be entitled to charge all overtime and other additional costs so incurred to the customer. Provided that nothing in this sub-clause 6. (d) shall require the Company to meet the agreed times for delivery in such circumstances or to agree to expedite delivery of the goods and these matters shall at all times be for the discretion of the Company. The Company shall if necessary be entitled to re-schedule and specify alternative time or times for delivery of the goods without the agreement of the customer but at all times acting in good faith.
- (e) Unless otherwise agreed in writing between the Company and the customer the contract price is based on the assumption that the goods will be produced in one batch and will be collected by the customer and accordingly the Company may at its discretion at any time increase the contract price to take into account any additional costs to the Company (including but not limited to storage and delivery costs) by reason of the supply of the goods in more than one batch and where the goods are not collected by the customer.

### 7. PRELIMINARY WORK

All preliminary work executed at the customer's request (whether or not experimental) will be charged to the customer.

### 8. SPECIFICATIONS

- (a) The customer shall be responsible for ensuring that any art work, sketches, specifications, descriptions or information or other instructions supplied by the customer or by any agent or representative of the customer in connection with the manufacture of production of the goods are accurate, unambiguous and clearly legible and meet the customer's requirements.
- (b) The customer shall also be responsible for ensuring that all computer files whether submitted to the Company on diskette, magnetic tape, cartridge, direct transfer or otherwise:-
- (i) are capable of being read and processed by the Company;
  - (ii) are supplied with a file layout in respect of each format of file supplied;
  - (iii) are provided within sufficient time to allow all required processing to take place and for results to be evaluated before processing and manufacture proceed;
  - (iv) are computer virus free.

- (c) The customer shall indemnify the Company fully in respect of any liability, loss, injury, damage, demand, cost, charge or expense which may be incurred or sustained by the Company by reason of or arising directly or indirectly in respect of any failure, delay, inaccuracy, ambiguity, illegibility or virus in respect of any such art work, sketches, specifications, descriptions, information, computer files or otherwise in relation to the customer's responsibilities set out in clauses 8.(a) and 8.(b) hereof.

### 9. PROOFS AND ADDITIONAL WORKS

Proofs of work may be submitted for the customer's approval and the Company shall incur no liability for any errors not corrected by the customer in proofs so submitted. Customer's alterations and additional proofs necessitated thereby and all other works carried out at the customer's request shall be charged to the customer. When style, type or layout is left to the Company's judgement, changes therefrom made by the customer shall be charged extra. A charge may also be made to cover any additional work involved where copy supplied is not clear and legible.

### 10. DELIVERY PAYMENT AND RISK

- (a) 'Delivery' shall mean whichever is the first to occur of (i) the goods leaving the premises of the Company whether upon collection by Royal Mail or otherwise or (ii) the Company giving notice in writing to the customer that the goods are ready for collection. If the customer fails to collect the goods within 7 days of such notice the Company shall be entitled at its discretion either to arrange transport of the goods on the customer's behalf and at the customer's expense to the customer's address or to arrange storage of the goods either at its own premises or elsewhere on the customer's behalf and at the customer's expense. Where the goods are stored at the Company's premises then the charge for such storage shall be not less than 2% of the contract price of the goods per month. All charges for such transport, storage shall be payable by the customer forthwith upon demand.
- (b) The customer shall inspect the goods immediately on delivery and shall give notice in writing to the Company within 5 working days of delivery as to any alleged defect together with details thereof. The customer shall permit all such alleged defective goods to be inspected by the company. In the absence of such notice of alleged defect the goods shall be deemed to be in accordance with the contract and the customer shall be deemed to have accepted the goods and shall be liable to pay therefor.
- (c) Subject to times to clause 6.(d) hereof the time for delivery of the goods shall be the time agreed in writing between the company and the customer or if no such time is agreed it shall be a reasonable time after the date of the despatch of the acceptance. Provided that time shall not be of the essence of the contract and the customer shall not be entitled to reject any goods by reason of late delivery where such goods have been delivered after the time for delivery unless the customer has given to the Company after the time for delivery not less than 21 days' written notice of his intention to do so and the goods are not delivered within such time. The Company may charge or give credit pro rata for goods delivered in excess of or less than the quantity ordered up to a maximum of 10 per cent over or under and such goods shall constitute due performance of the obligation by the company. Unless the Customer rejects any excess over 10 per cent within 5 working days of delivery the same shall be treated as delivered under an independent contract on the same terms and conditions set out herein and the customer shall pay for the same pro rata.
- (d) Each instalment or part delivery delivered or to be delivered shall be deemed to be independent contract subject to the terms set out herein.
- (e) Payment shall be made by the customer to the Company in full without deduction by way of set-off or otherwise within 30 days of the date of the company's invoice. The Company shall be entitled to charge and be paid interest by the customer at the rate of 2 per cent per month calculated on a daily basis on overdue accounts.
- (f) The risk in the goods shall pass to the customer (i) upon delivery, or (ii) where the customer for any reason fails to collect the goods as contemplated by clause 10.(a) upon the commencement of whichever is the first to occur of transportation or of storage of the goods.
- (g) Upon any suspension of work at the request of the customer or upon delay caused through any default of the customer the Company shall be entitled to payment in respect of all work then carried out (whether or not delivered) and all materials ordered.
- (h) Without prejudice to any remedy which the Company may have in the event of the customer cancelling the contract the Company shall be entitled to charge the customer for all expenses incurred by the Company in respect of such contract to the date of cancellation and in addition the Company shall be entitled to any loss of profit (and expenses if any) arising by reason of the cancellation of such contract.

### 11. PROPERTY

- Until payment has been made in full of all sums (whether arising) owing from the customer to the Company from time to time: legal and beneficial ownership in the goods delivered shall subject to (b) below remain with the Company and the customer shall hold the goods on a fiduciary basis as bailee of the Company in such a way that the goods are separate and identifiable.
- (b) Unless paragraph (c) below is applicable the customer may on-sell the goods in the normal course of business in which case the Company's beneficial interest shall attach to the proceeds of sale.
- (c) If any of the events referred to in clause 22 below occurs in relation to the customer the Company shall be entitled forthwith and without notice to repossess the goods or to require the customer to deliver them to the Company.

### 12. LIEN

The Company shall have a general lien on all property including computer files of the customer in the Company's possession (whether or not paid for) for any sums owed. The customer hereby irrevocably appoints the Company as its exclusive sales agent in relation to such property and in the event that after having given 14 days notice in writing to the customer, any sums remain outstanding the Company as such agent is authorised to dispose of such property as it sees fit at the best price reasonably obtainable in the circumstances and shall apply the proceeds towards payment of the sums owed by the customer and any balance over shall be payable to the customer.

### 13. LIABILITY

- (a) The Company's liability to the customer in respect of (a) any breach of its contractual obligations arising under this contract, and (b) any representation statement or tortious act or omission including negligence arising under or in connection with this contract (hereafter and 'Event of Default') shall be limited to a sum equal to the Company's contract price for the goods or that part of it so affected provided that where the customer shows the same to have resulted from the negligence (as defined in the unfair contract terms act 1977) of the Company's liability for death or personal injury shall not be limited.
- (b) Subject to clause 13. (a) above the Company shall not be liable to the customer in respect of any event of default for loss of profits, goodwill or any type of special indirect or consequential loss whatsoever caused (including loss of or damage suffered by the customer as a result of a claim or an action brought by a third party) even if such loss was reasonably foreseeable in the contemplation of the Company or if the Company had been advised of the possibility of the customer incurring the same.
- (c) The customer hereby agrees to afford the Company not less than 30 days in which to remedy an event of default hereunder.
- (d) The Company shall be excluded from any other liability whether arising under this contract or otherwise and without prejudice to the generality of the foregoing shall be under no liability for negligence (other than in respect of death or personal injury) in respect of any advice given.
- (e) If and to the extent that a court of competent jurisdiction decides that the Company shall be liable for any matter other than that contemplated by clause 13. (a) above, the liability of the Company in that case shall be limited to a sum equal to the contract price for the goods or that part of it so affected.
- (f) The Company shall not be liable however in respect of any failure, delay or defect in the goods or default caused by the supply or specification of unsuitable faulty or substandard material by the customer.
- (g) All goods supplied but not manufactured by the Company are sold subject to the conditions of sale of the manufacturer thereof and the sole liability of the Company in respect thereof to the customer shall be limited to such benefits as the Company shall receive under any contract which the Company has with such manufacturer. In the event of any failure by such manufacturer for whatever reason to meet such liability which may arise by reason of defect in such goods the Company shall be under no liability to the customer in respect of such defect.

### 14. EXCLUSIONS

Except as expressly stated herein, all conditions, warranties, representations and/or undertakings, express or implied, statutory or otherwise are excluded.

### 15. CUSTOMER PROPERTY

If the Company shall hold or work on property of the customer or any third party it shall have no liability for any damage to or loss of such property. Whether caused by negligence or otherwise, and the customer shall indemnify the Company in respect thereof. The customer shall effect its own insurance cover with respect to such property which held by the Company and the Company shall be under no obligation to insure the property. If the Company shall hold the property for more than 3 months it may give notice to the customer requiring removal thereof and may at the expense of the customer dispose of the same if not removed within 30 days of such notice.

### 16. MATERIAL SUPPLIED

- (a) The Company may reject any computer file, paper, film, plate, printed sheets, signatures or other materials supplied or specified by the customer or the resulting product of any direct input provided by or on behalf of the customer ("Materials") if in the Company's opinion it is unsuitable, substandard or of defective quality. Any additional cost incurred by such rejection at any stage during or after production shall be charged by the Company. The materials shall be supplied within a reasonable time prior to manufacture or production and be of an adequate quantity to allow for normal spoilage. In particular but without prejudice to the generality of the foregoing, where 100% production or manufacture is required, the customer must take a view on what quantities are necessary (normally not less than 100%) and shall be responsible for the consequences of any failure to supply adequate quantities to the Company.
- (b) The customer shall indemnify the printer against any liability which it may incur as the direct or indirect result of the customer supplying or specifying the materials (for use in the production of the goods) which are inadequate, defective, sub-standard or unsuitable and the customer agrees that the Company shall not be responsible to the customer in respect of any defective or incomplete work arising therefrom.

### 17. STANDING MATTER

Metal, film, glass, ink, paper and other materials used by the Company in production shall remain its exclusive property. Type may be taken down and lithographic, photographic and other work destroyed and electronically stored origination material and information may be stored to record immediately on completion of the goods unless instructions to the contrary in writing are given by the customer and accepted by the Company acting by a director in writing.

### 18. LABEL AND OTHER LEGAL MATTERS

- (a) The Company may refuse to print any work if in its opinion it contains matter likely to result in civil or criminal proceedings. 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 work carried out on or before the date of such seizure, order or injunction as if so delivered.
- (b) The Customer shall be responsible for ensuring that all advertisements and mail-shots issued on their behalf or on behalf of their principals meet all current, legal and code of practice requirements. In particular, but without prejudice to the generality of the foregoing, the provision of the British Codes of Advertising and Sales Promotion must be followed both in letter and in spirit. In addition, customers must also ensure that the arrangements for the collection, processing and storage of personal data comply with the Data Protection Act 1984.

### 19. INDEMNITY

The customer hereby undertakes fully and effectually to indemnify and to keep indemnified (and in the case of legal costs to reimburse on an indemnity basis) the Company from and against all costs, expenses, damages and losses in connection with any third party claims or proceedings whatsoever (including claims or proceedings settled by the customer in its discretion) in respect of the materials or the goods or goods made or worked on or work carried out by the Company pursuant to this contract. The foregoing includes (but not by way of limitation) claims or proceedings relating to tortious acts (including defamation) copyright, registered designs, design rights, trade or service marks, patents, the use of data contained in computer files and any other industrial or intellectual property.

### 20. SET OFF

- (a) The customer hereby covenants to fully indemnify and keep indemnified the Company from and against any claims, costs, damages and expenses whatsoever in consequence of or in connection with any failure by the customer or any member of the customer's group to duly and punctually perform all their obligations pursuant to this contract or any other contract, agreement or agreement whatsoever (a 'Relevant Transaction').
- (b) The Company shall not be obliged to pay any sum to the customer (or any member of the customer's group) pursuant to this contract or any relevant transaction if, and for so long as, the customer (or any member of the customer's group) is in default of making payment to the Company under this contract or under a relevant transaction.
- (c) Without prejudice to (b) above, the Company may set off any amount owed by it to the customer or any member of the customer's group against any liability owed to it by the customer or any member of the customer's group (whether such liability be actual or contingent, liquidated or unliquidated, ascertained or unascertained).
- (d) If an obligation to make payment is unliquidated or unascertained the Company may in good faith set off the amount it estimates will be the amount of such obligation once it becomes liquidated or ascertained.
- (e) 'Customer's Group' shall include all subsidiaries (as defined in the Companies Act 1995) of the customer's ultimate parent undertaking.
- (f) Nothing in this clause shall be affected to create a charge of security interest. This clause shall be without prejudice and in addition to any right of set off, combination of accounts, lien or other right to which the Company is at any time otherwise entitled (whether by operation of law, contract or otherwise).

### 21. FORCE MAJEURE

The Company shall not be in breach of this contract if there is any total or partial failure of performance by it of its duties and obligations under this contract occasioned by an act of God, fire, flood, power failure, reduction of power supplied, mechanical failure, lack or shortage of materials (not being or to the wife default of the Company) act of government or state, war, civil commotion, insurrection, embargo, strike, lockout, industrial dispute or action taken by the Company or any other person, firm or company in connection therewith, and any other reason beyond the control of the Company. If the Company is unable to perform its duties and obligations under this contract as a direct result of the effect of one of such reasons the Company shall give written notice to the customer of such inability stating the reason in question. The operation of this contract shall be suspended during the period, (and only during the period) in which the customer is unable to perform its duties and obligations under this contract. Forthwith upon the reason ceasing to exist the Company shall give written advice to the customer of this fact. If the reason continues for a period of more than 90 days the customer shall have the right to terminate this contract upon giving 30 days written notice of such termination to the Company.

### 22. CUSTOMER'S DEFAULT

- (a) If the customer shall be in default under this contract or any other contract with the Company or if the Company has reason to believe that the customer will be unable or unwilling to discharge its obligations to the Company as they arise then the Company may:
- (b) Cease manufacture and production and terminate this contract without any liability for any default thereby caused, and
- (c) Give notice thereof to the customer whereupon the customer shall pay forthwith for the goods under this and any other contract with the customer (whether or not payment would otherwise be due) and shall pay a proper charge for all material used or provided and work carried out prior to such cessation as aforesaid.

### 23. REMEDIES

Termination of this contract for whatsoever cause shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any sum of money owing by one party to the other.

### 24. NOTICES

Notices shall be deemed to be served when delivered or posted by first class mail to the registered office or in the case of an individual or partnership to the last known address of the party to be served.

### 25. LAW

This contract shall be governed by and construed in accordance with the Laws of England and all disputes arising in connection with the contract shall be submitted to the non-exclusive jurisdiction of the English Courts.

### 26. HEADINGS

The headings shall not affect the meaning or interpretation of this contract.

### 27. SEVERABILITY

If and insofar as any part or provision of this contract is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed part of this contract and the remaining provisions of this contract shall continue in full force and effect. The parties shall meet to discuss the void and unenforceable provisions and shall substitute therefore a lawful and enforceable provision which so far as possible results in the same economic effects.

### 28. ENTIRE AGREEMENT

The making, execution and delivery of this contract have not been induced by representations, statements, warranties or agreements other than those herein expressed. Unless expressly agreed otherwise in writing between the Company acting by a Director and the customer this contract embodies the entire agreement of the parties and there are no other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

### 29. WAIVER

No failure or breach on the part of either party hereto to exercise any right or remedy under this contract shall be construed or operated as a waiver thereof nor shall any party's exercise of any right or remedy preclude the future exercise of such right or remedy as the case may be.

### 30. MISCELLANEOUS

- (a) Unless otherwise specifically agreed in writing, the goods shall not be required to comply with any direction, regulation or provision of any foreign law or governmental authority or agency.
- (b) Unless otherwise specifically agreed in writing, the company shall be entitled to affix to or print the goods legends bearing the Company's name and/or trade or other marks.