

GENERAL CONDITIONS OF TRADE

1 DEFINITIONS

1.1 In these Conditions the following words have the following meanings:

"the Company" means 4DM Limited or 4DM Print Limited or DL Marketing (Direct Link) Limited or any connected company

"Contract" means any contract between the Company and the Customer incorporating these Conditions for the sale and purchase of the Goods and/or Services

"Customer" means the party that has placed the order for the Goods and/or Services

"Customer's Group" shall include all subsidiaries (as defined in the Companies Act 1985 as amended) of the Customer's ultimate parent undertaking

"Force Majeure" means an act beyond the control of the Company, including but not limited to any act of God, fire, flood, power failure, reduction of power supplied, mechanical failure, lack of shortage of materials (not being due to the wilful 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 connected company, and any other reason beyond the control of the Company

"Goods" means 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

"Services" means the services to be carried out by the Company as the case may be pursuant to this contract

1.2 In these Conditions:

1.2.1 reference to the Company and the parties shall include their respective successors in title to substantially the whole of their respective undertakings;

1.2.2 references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;

1.2.3 headings will not affect the construction of these Conditions.

2 APPLICATION OF TERMS

2.1 Subject to Condition 2.2, the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any order, confirmation of order, specification or other document).

2.2 No modification or addition to these Conditions shall be binding on the Company unless made in writing and signed by a Director or authorised officer of the Company.

3 ACCEPTANCE OF ORDER

3.1 Each order by the Customer shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions.

3.2 If the Customer wishes to place an order on the basis of any quotation provided by the Company such order must be accompanied by sufficient information to enable the Company to proceed with the order. Delay in supplying such information may lead to the Company revising the quotation.

3.3 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company and the Company confirms to the Customer the date of delivery or the Company delivers the Goods and/or Services to the Customer.

3.4 The Customer must ensure the terms of its order and any applicable specification is complete and accurate.

3.5 Each order issued by the Customer to the Company for Goods and/or Services and accepted by the Company shall constitute a separate Contract.

4 CANCELLATION AND VARIATION

4.1 No order which has been accepted by the Company may be altered or withdrawn by the Customer except by an agreement in writing of the Company on terms that the Customer shall indemnify the Company in full against all losses (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Company as a result of such alteration or withdrawal.

4.2 The Customer shall indemnify the Company against all additional costs incurred by the Company resulting from any alteration or withdrawal of an order by the Customer made without the written consent of the Company. Such additional costs shall be paid within 7 days of the Company's demand.

5 AGENCY

5.1 The Customer shall contract as principal unless the Customer discloses in writing before the despatch by the Company of the acceptance:

5.1.1 that it is acting as agent; and

5.1.2 the identity of the principal.

5.2 The Customer shall remain liable under this Contract unless the Company acting by an authorised officer shall agree otherwise in writing.

5.3 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.

5.4 The Customer will forward any invoices to the principal within 7 days of receipt.

6 PRELIMINARY WORK

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

7 SPECIFICATIONS

7.1 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 or production of the Goods and/or the supply of Services are accurate, unambiguous and clearly legible and meet the Customer's requirements.

7.2 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:

7.2.1 are capable of being read and processed by the Company;

7.2.2 are supplied with a file layout in respect of each format of file supplied;

7.2.3 are provided within sufficient time to allow all required processing to take place and for results to be evaluated before processing and manufacture proceed; and

7.2.4 are computer virus free.

7.3 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 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 quality 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.

- 7.4 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 this Condition 7.
- 7.5 The Customer grants to the Company a non-exclusive, non-transferable, royalty-free licence to use any materials supplied by the Customer only to the extent necessary for the Customer to perform the Services and produce the Goods and the Customer shall obtain all necessary approvals, authorisations, licences, consents and waivers for such use by Company of any such material which belong to a third party.
- 7.6 The Customer shall indemnify the Company fully for any liability, loss, injury, demand, cost, charge or expense which may be incurred or sustained by reason of or arising directly or indirectly in respect of any material used in the Goods or to perform the Services belonging to a third party.

8 PROOFS AND ADDITIONAL WORKS

- 8.1 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 made by the Customer shall be charged extra. A charge may also be made to cover any additional work involved where the copy supplied is not clear and legible.

9 DELIVERY

- 9.1 "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.
- 9.2 If the Customer fails to collect the Goods within 7 days of such notice the Company shall be entitled at its absolute discretion to:
- 9.2.1 arrange transport of the Goods on the Customer's behalf and at the Customer's expense to the Customer's address; or
- 9.2.2 to arrange storage of the Goods either at its own premises or elsewhere on the Customer's behalf and at the Customer's expense.
- 9.3 Where the Goods are stored at the Company's expense 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 and storage shall be payable by the Customer within 7 days of demand.
- 9.4 The time for the Delivery of the Goods shall be the time agreed in writing between the Company and the Customer. If no such time is agreed it shall be the reasonable time after the date of the despatch of the acceptance.
- 9.5 Time shall not be of the essence of the Contract.
- 9.6 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:
- 9.6.1 the Customer has given to the Company not less than 21 days' written notice of his intention to do so, after the date for Delivery ; and
- 9.6.2 the Goods have not been delivered within such time.

10 RISK AND PROPERTY

- 10.1 The Goods are at the risk of the Customer from the time of Delivery, or where the Customer fails to collect the Goods as contemplated by Condition 9.1(ii) upon the commencement of whichever is the first to occur of transportation or of storage of the Goods.
- 10.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full all sums due to it in respect of:
- 10.2.1 the Goods and/or the Services; and
- 10.2.2 all other sums which are or which become due to the Company from the Customer on any account

- 10.3 Until ownership of the Goods has passed to the Customer, the Customer must:
- 10.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 10.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they will remain readily identifiable as the Company's Goods;
 - 10.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 10.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company;
 - 10.3.5 hold the proceeds of the insurance referred to in Condition 10.3.4 above on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 10.4 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 10.5 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.
- 10.6 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 PRICES AND CHARGES

- 11.1 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.
- 11.2 The Company shall be entitled to adjust the Contract price by such amount as it thinks fit at any time before Delivery of the relevant Goods and/or Services if any increase in the cost to the Company in supplying any Goods and/or Services whether such increase shall result from higher costs of raw materials, labour, transport or overhead expenses or from any other cause.
- 11.3 Unless otherwise agreed in writing between the Company and the Customer the Contract price is based on the assumption that the Goods will be supplied in 1 batch and to the Customer's address as set out in any quotation and accordingly the Company may, at its absolute discretion at any time increase the Contract price to take account of any additional cost to the Company (including but not limited to storage and Delivery costs) by reason of the supply of the Goods in more than 1 batch or to a different address.
- 11.4 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 reasonable opinion of the Company become necessary in order to meet delivery dates:
- 11.4.1 to employ some or all of the Company's employees at overtime rates; or
 - 11.4.2 incur other additional costs; or
 - 11.4.3 if expedited Delivery shall be required by the Customer with the like results
- the Company shall be entitled to charge all overtime and other additional costs so incurred to the Customer. Provided that nothing in this Condition 11.4 shall require the Company to meet the agreed times for Delivery in such circumstances or to agree to expedite Delivery of the Goods and/or Services and these matters shall at all times be for the absolute discretion of the Company.
- 11.5 The Company shall, if necessary, be entitled to re-schedule and specify alternative time or times for Delivery of the Goods and/or Services without the agreement of the Customer but at all times acting in good faith.

12 PAYMENT

- 12.1 Payment shall be made within 30 days of the date of the Company's invoice (the "Due Date").
- 12.2 All payments shall be made in full without deduction in respect of any set-off, counter claim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 12.3 If payment of any sum due to the Company is not made on or before the Due Date the Company shall be entitled to charge interest thereafter on such sum at the rate of 4 per cent per annum above the current base rate of Barclays Bank Plc such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month.

13 QUALITY

- 13.1 The Company warrants that (subject to the other provisions of these Conditions) upon Delivery and for a period of 12 months from the date of Delivery, the Goods will:
- 13.1.1 be safe and fit for the use for which such Goods are produced;
- 13.1.2 be free from defects in materials and workmanship, and conform in all material respects to the approved samples and all other applicable specifications; and
- 13.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended).
- 13.2 The Company shall not be liable for a breach of any of the warranties in Condition 13.1 unless:
- 13.2.1 the Customer gives written notice of the defect to the Company, and (if the defect is as a result of damage arising during transit at the risk of the Company) to the carrier, within 14 days of the time when the Customer discovers or ought to have discovered the defect; and
- 13.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 13.3 If any Goods do not comply with the warranties set out in Condition 13.1 ("Defective Product") the Company shall at its cost and expense and discretion either:
- 13.3.1 replace the Defective Product; or
- 13.3.2 give a full credit or refund for the price paid by the Customer for such Defective Product.
- 13.4 The Company shall not be liable for a breach of any of the warranties in Condition 13.1:
- 13.4.1 to the extent that it is attributable to further use of such Goods after giving notice pursuant to Condition 13.2.1; or
- 13.4.2 if the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage or (in the absence of such instructions) good trade practice; or
- 13.4.3 that are attributable to use in an environment for which the Goods were not designed or intended by the Company.
- 13.5 If the Company complies with Condition 13.3 it shall have no further liability for a breach of any of the warranties in Condition 13.1 in respect of such Goods.
- 13.6 Any Goods or parts replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.
- 13.7 The Company warrants that (subject to the other provisions of these Conditions) the Services:
- 13.7.1 will be performed with reasonable care and skill and in accordance with generally recognised practices; and

13.7.2 will conform with all descriptions and specifications provided to the Customer by the Company.

14 LIMITATION OF LIABILITY

14.1 Subject to Condition 7 and Condition 19, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

14.1.1 any breach of these Conditions; and

14.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 (as amended)) are, to the fullest extent permitted by law, excluded from the Contract.

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

14.4 Subject to Condition 14.3, the Company shall not be liable to the Customer for:

14.4.1 any indirect or consequential, special or punitive loss, damage, costs or expenses;

14.4.2 loss of profit;

14.4.3 loss of business;

14.4.4 loss of revenue; or

14.4.5 depletion of goodwill.

14.5 Subject to Condition 14.3, the Company's total liability to the Customer under or connected with these Conditions for:

14.5.1 damage to the Customer's tangible property resulting directly from the Company's negligence or that of its employees;

14.5.2 any other loss or damage not covered by Condition 14.5.1 and which arises directly out of the Company's negligence;

14.5.3 any other direct loss not covered by Conditions 14.5.1 or 14.5.2:

shall not exceed 125% (one hundred and twenty five per cent) of the price payable for the Goods and/or Services.

15 SUB-CONTRACTING AND ASSIGNMENT

15.1 The Company may without the consent of the Customer sub-contract or assign any or all of its rights and obligations hereunder.

16 LIEN

16.1 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 if, 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 seems 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.

16.2 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 whilst held by the Company and the Company shall be under no obligation to insure the same. If the Company shall hold any such 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.

17 **STANDING MATTER**

- 17.1 Metal, film, glass, ink, paper and other materials used by the Company in production shall remain its exclusive property.
- 17.2 Type may be taken down and lithographic, photogravure and other work immediately destroyed after the order is executed unless written instructions to the contrary are given by the Customer and accepted by the Company acting by an authorised officer. The Company shall be entitled to charge rent for storing such works.

18 **LIBEL AND OTHER LEGAL MATTERS**

- 18.1 The Company may refuse to print any work if in its opinion 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.
- 18.2 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, the Customer must also ensure that the arrangements for the collection, processing and storage of personal data comply with the Data Protection Act 1998.

19 **INDEMNITY**

- 19.1 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").

20 **TERMINATION**

- 20.1 Without prejudice to any other right or remedy available to the Company the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Customer and if the Goods have been delivered but not paid for the price shall become immediately due and payable in the event that:
- 20.1.1 the Customer fails to carry out its obligations under any Contract of which these Conditions form part; or
- 20.1.2 the Customer ceases or threatens to cease to carry on its business or any substantial part thereof; or
- 20.1.3 distress execution judgement or any order of the Court is levied or enforced or executed upon or executed upon or against any property of the Customer; or
- 20.1.4 a Receiver or Administrator is appointed of the undertaking or assets of the Customer; or
- 20.1.5 a Resolution is passed or proceedings are commenced for the winding up of the Customer; or
- 20.1.6 the Customer enters into any arrangement or compositions with its creditors.

21 **FORCE MAJEURE**

- 21.1 The Company shall not be in breach of this Contract if there is any total or partial failure to performance by it of its duties and obligations under this Contract occasioned by an act of Force Majeure.
- 21.2 If the Company is unable to perform its duties and obligations under this Contract as a direct result of Force Majeure 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 reason continues.
- 21.3 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

- 22.1 If the Customer shall be in default under this Contract or any other Contract with the Company or if the Company has reasons to believe that the Customer will be unable or unwilling to discharge the obligations to the Company as they arise then the Company may:
- 22.1.1 cease manufacture and production and terminate this Contract or any other contract without any liability for any default thereby caused; and
 - 22.1.2 give notice thereof to the Customer whereupon the Customer shall pay forthwith for the Goods under this Contract or 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

- 23.1 Termination of this Contract for whatsoever cause shall not affect the rights or remedies or either party in respect of any antecedent breach or in respect of any sum of money owing by one party to be served.

24 GENERAL

- 24.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 24.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 24.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 24.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 24.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 24.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

25 COMMUNICATIONS

- 25.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post by facsimile transmission or by e-mail:
- 25.1.1 (in the case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Customer; or
 - 25.1.2 (in the case of communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer.
- 25.2 Communications shall be deemed to have been received:
- 25.2.1 if sent by pre-paid inland first class post, 4 days after posting (exclusive of the day of posting);
 - 25.2.2 if sent by registered airmail, 7 days after posting (exclusive of the day of posting);
 - 25.2.3 if delivered by hand, on the day of delivery;

25.2.4 if sent by facsimile transmission or e-mail on a working day (in England) prior to 4.00 p.m., at the time of transmission and otherwise on the next working day provided sender can show satisfactory transmission.