

New Forest Post Production Conversion, Duplication and Replication Terms and Conditions

General information

New Forest Post Production Hereinafter known as (The Company) will provide services to the customer, providing the customer has assessed all the risks that may occur, to which the customer is usually in the best position to do so. Therefore the customer should ensure it is adequately insured against all risks.

The term "Agreement" means these conditions together with any terms (including those as to price and quantity) contained in any order which is accepted by an authorised customer representative of any Price and Service Agreement (where relevant) as described in paragraph 2.

The term "Services" shall mean the services that are the subject matter of any Agreement, including mastering, provision of artwork, film or packaging and delivery and physical distribution services.

1. Quotations by the Company shall not constitute an offer and may be withdrawn or revised at any time until written acceptance by the Company of the Customer's order or the commencement of work by the Company as referred to in paragraph 2 below.

2. An Agreement shall be concluded upon acceptance by the Company of the Customer's order in writing or by the Company commencing work or preparatory procedures pursuant to the order (whichever is the sooner) and its only terms shall be those specified herein. This Agreement shall apply in place of and prevail over any terms and conditions contained or referred to in documentation issued by the Customer or in correspondence or elsewhere implied as to the time for performance of any obligation of the Company unless specifically agreed to in writing by an Authorised Representative of the Company and any purported provision to the contrary or in conflict with the foregoing is hereby excluded by the Company and waived by the Customer.

3. Price Variation. At any time before delivery of the goods or commencement of the Services the Company may increase the price payable to reflect any increase in labour or material costs relating to its performance of the Agreement.

4. Preliminary Work. All work carried out, whether experimentally or otherwise, at the Customer's request will be charged for.

5. Copy. A charge may be made to cover any additional work involved where copy (including label copy) supplied by the Customer is not clear or legible.

6. Proofs. Proofs of all work may be submitted for the Customer's approval and the Company shall not incur any liability for any errors not corrected by the Customer. Any additional proofs necessitated thereby shall be charged extra. If any issues of style, type or layout are left to the judgement of the Company, changes arising from these issues made by the Customer shall be charged extra.

7. Delivery of Goods and Services. The Company shall endeavour to meet any agreed delivery date or dates.

The Company shall not be liable for any loss arising out of any delay in delivery. The delivery date shall be agreed on acceptance of the order by the Company. The Company may on terms which it sees fit agree any request from the Customer to vary the agreed delivery date. All costs associated with delivery shall be borne by the Customer unless expressly agreed otherwise with the Company.

The Customer shall accept delivery when tendered before or after the agreed delivery date.

If the Customer does not take delivery when tendered the Company shall be deemed to have performed its obligations in respect of the Goods and the Customer shall pay any additional expenses incurred by the Company.

Any agreed time period shall be calculated by reference to the number of Working Days between receipt of a workable order and despatch of the Goods from the Company's premises or completion of the performance of the Services.

An order becomes a workable order on the Working Day when:

- (i) All of the components required for manufacture have been delivered
- (ii) All components are to specification and in a condition suitable for use in manufacturing
- (iii) All licences and other necessary clearances such as permissions or certificates have been received by the Company.
- (iv) The Company has all the information required to perform the Services and the Customer has supplied such assistance and carried out such preparations as the Company may require.

8. Damage or Loss in Transit. If the Company or its carrier is to deliver Goods the Customer shall examine them immediately upon, and in any event within three days of, receipt and shall notify the Company immediately if they are received in a damaged condition or if there are shortages and will indemnify the Company against any loss which it suffers because any such notification is received too late to enable it to claim against carriers or insurers in respect of such damage or loss in transit not caused by the Company. Subject to the above, in all circumstances of loss or damage to the Goods the Customer's claim shall be limited to the invoiced value of the Goods.

9. Multiple Deliveries. Subject to the Agreement, the Customer may collect or the Company may deliver the Goods in instalments and in such event each instalment shall be deemed a separate contract to, the following purposes:

- (i) No default by the Company in regard to any instalment shall entitle the Customer, to repudiate the Agreement in respect of any outstanding deliveries and
- (ii) Delivery of an instalment shall be part performance under the Agreement and payment in respect thereof shall be made accordingly.

10. Terms. All monies payable by the Customer under the Agreement shall be paid in full prior to any commencing work or preparatory procedures pursuant to the order. In respect of approved credit accounts payment is due 30 days from the invoice date. In all other cases payment is due against Pro Forma invoice on acceptance of the order. Without prejudice to any other rights of the Company the Customer shall pay interest on any sums overdue to, payment at a rate Eight percent above the Base Rate of National Westminster Bank PLC from the due date for payment until payment has been received in full, including sums payable for additional costs.

11. Default. If the Customer fails to pay any sum when due under this or any other agreement between the Customer and the Company then the Company may at its option:

- (i) Treat this and any other agreement between the parties as having been repudiated and recover damages accordingly
- (ii) Suspend further performance until all sums owing to the Company by the Customer under any agreement have been paid
- (iii) Withhold further performance under this or any other agreement until it has received payment in advance of all monies to become payable hereunder:
- (iv) Suspend any or all credit granted to the Customer on any account.

12. Properties and Retention of Title. Title of the Goods will pass to the Customer only when payment in full for the Goods delivered to the Customer, under the relevant Agreement including any interest payable under paragraph 10 has been received by the Company. The company by its employees or agents shall be entitled to enter upon or into any land, buildings or vehicles of the Purchaser to retake possession of those Goods in respect of which title has not passed to the Customer in the event that the right of resale granted under paragraph 10 is terminated in pursuant to paragraph 11

13. Metal Parts and Printing Plates. All masters, metal parts, label films used for printing on disc and packaging, paper, parts and other components purchased or manufactured by the Company and used by the Company in relation to the Goods or Services shall remain the exclusive property of the Company components including any items subject to an extra charge. The Company shall not be obliged to preserve such components relating to the Goods or Services unless previously agreed in writing. The Company preserves the right to charge additional charges for any such components preserved.

14. Customer Supplied Materials. The Company shall not incur any liability for any errors or omissions or faulty material supplied by the Customer. The Company may without assigning any reasons reject any masters, paper parts, packaging, copy, film or other materials agreed to be supplied or specified by the Customer. Quantities of materials supplied by the Customer shall allow for normal spoilage. The Customer shall indemnify the Company against any loss, damage or expense howsoever arising which the Company may suffer or incur because any material supplied by the Customer, is defective or unsuitable in any way.

15. Customer's Warranties. A) The company may refuse to manufacture, replicate, supply or otherwise deal with any matter, which it considers may be illegal or unlawful, or in circumstances in which the Company believes that any such manufacture or dealing by it may infringe the rights of any third party or involve it in any illegal or unlawful act or default.

(B) It is a condition of this Agreement (and the Customer undertakes) that:

(i) The manufacture or supply of or other dealing with the Goods or the performance of the Services by the Company will not infringe the copyright or other rights of any third party and will not result in the Company engaging or being involved with any unlawful act and neither will it result in the Company incurring any liability whatsoever to any person, firm, company or other organisation.

(ii) The Customer has complied with all obligations and has obtained all permissions and consents necessary for the manufacture, supply, distribution and other dealings with the Goods.

(iii) The Goods will comply with all statutory and regulatory provisions applying to the Goods, including where applicable the Video Recordings Act 1984 (and the Regulations made under it).

(iv) The Goods (and any dealing with them or Services performed in connection with them) will not be obscene, defamatory, blasphemous or in any other way illegal or unlawful.

(C) The Customer will indemnify the Company against all losses, damages, costs and expenses (including legal fees on an indemnity basis) which the Company incurs or becomes liable for as a result of any claim that the manufacture or supply of or other dealing with the Goods or any Services performed in connection with any Goods by the Company infringes the rights of any third party or is otherwise illegal or unlawful or as a result of any breach by the Customer of any term of this Agreement.

16. Company's Warranties. (A) The Company warrants that the Goods will be free from material defects under normal conditions of use and when used in conjunction with the appropriate equipment. This warranty is given subject to the proviso that the Company shall be under no liability in respect of any defect in the Goods arising from or out of materials supplied by the Customer.

(B) The Company warrants that the Services will be performed with reasonable skill and care.

(C) Subject as expressively provided in these conditions, all warranties, conditions or other terms of implied by statute or at common law are excluded to the fullest extent permitted by law.

17. Exclusion of Liability. The liability of the Company in respect of any Goods or Services proven to be defective shall not exceed the invoiced price of those Goods or Services which are defective and no liability shall accrue for any indirect or consequential loss including (but not limited to) loss of profit howsoever arising suffered by the Customer.

18. Consumer Transactions. If the agreement is a Consumer Transaction within paragraph 2(i) Consumer, Transactions (Restrictions on Statements) Order 1976 (as amended) nothing in the two paragraphs aforementioned hereof affects or will affect the statutory rights of the Customer.

19. Acceptance of the Goods. The Customer shall within seven days from the delivery of the Goods give written notice to the Company of any respect in which it is alleged that the Goods do not comply with the Agreement. Subject to any such notice, the Goods will be deemed to comply with the Agreement in all respects and the Customer shall be bound to accept and pay for the Goods under the terms hereof.

20. Risk. If the Customer or its carrier collects the Goods the risk in them shall pass upon commencement of loading onto the collecting transport or otherwise being taken into the possession or control of the Customer its servants or agents. If the Goods are to be delivered by the Company or its carrier the risk shall pass when the Goods have been so delivered. If the Customer does not take delivery of the Goods when duly tendered the risk shall pass when delivery should have been accepted. The Company may at its option store or insure the Goods at the expense of the Customer. All other material (including but not limited to Customers supplied materials) in the possession of the Company or otherwise shall be held, worked on and carried at the Customer's risk in every respect.

21. Force Majeure. The Company shall not be liable for any failure to perform any or all of its obligations under the Agreement arising from any inability to secure or procure at reasonable cost, labour, materials or other supplies of any kind or any act of God, war, strike, lockout or other labour dispute, fire, flood, drought, air-pollution, equipment failure, legislation, order of public authority or any other cause whatsoever beyond its control.

22. Severability. If and to the extent that any provision of the Agreement (including these Terms and Conditions) is wholly or partly illegal, void or unenforceable then such provision or offending part thereof shall be severable from the remaining provisions or parts of provisions, which shall remain in full force and effect.

23. Cancellation.

The Customer with the Company's written consent may only cancel the Agreement.

In the event of such cancellation the Customer shall pay to the Company a cancellation charge, commensurate with the Company's costs incurred up to the date of cancellation plus the Company's loss of profit.

24. Notices. All notices or other communications may be sent by first class post or facsimile transmission to the parties at their respective addresses set out in the Agreement or such other address as the party being served shall from time to time notify to the other. If served by post the date of service shall be the date in the normal course of posting upon which the same would be received and if served by facsimile transmission the notice shall be deemed served upon the date of despatch.

25. Applicable Law. The Agreement shall in all respects be governed and construed in accordance with English Law. The parties submit to the jurisdiction of the English courts.

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