

MPS MARKETING SERVICES LTD - BUSINESS TO BUSINESS TERMS AND CONDITIONS OF SALE

Application and entire agreement

- 1) These Terms and Conditions apply to the provision of the services detailed in our Estimate (Services) by MPS Marketing Services Ltd a company registered in England and Wales under number 6360656 whose registered office is at Unit 13, Cattlemarket Ins Park, Chew Road, Winford, Bristol, BS40 8HB (Supplier) to the person buying the services (Customer).
- 2) You are deemed to have accepted these Terms and Conditions when you accept our Estimate or from the date of any performance of the Services (whichever happens earlier) and these Terms and Conditions and our Estimate (the Contract) are the entire agreement between us.
- 3) You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 4) INTERPRETATION
 - a) A "business day" means any day other than a Saturday, Sunday or bank holiday.
 - b) The headings in these Terms and Conditions are for convenience only and do not affect their interpretation.
 - c) Words imparting the singular number shall include the plural and vice-versa.
 - d) "Estimate" means the written estimate in respect of the services to be provided by the supplier to the customer
 - e) "goods" or "work" means deliverables and/or services to be provided by the supplier as set out in an estimate or as otherwise agreed.
 - f) "Supplier IP" means Supplier intellectual property.
 - g)
- 5) SERVICES
 - a) We warrant that we will use reasonable care and skill in our performance of the Services which will comply with the quotation, including any specification in all material respects. We can make any changes to the Services which are necessary to comply with any applicable law or safety requirement, and we will notify you if this is necessary.
 - b) We will use our reasonable endeavors' to complete the performance of the Services within the time agreed or as set out in the quotation; however, time shall not be of the essence in the performance of our obligations
- 6) PRICE VARIATION
 - a) Estimates are based on the supplier's current costs of production and, unless otherwise agreed, are subject to amendment on or at any time before acceptance in accordance with clause 7(a) to meet any rise or fall in such costs.
- 7) ORDER & CANCELLATION
 - a) Any estimate is deemed to be accepted upon receipt of a purchase order from the customer or acceptance by the customer in writing, including email ('order').
 - b) An order can only be cancelled up to seven (7) days before the work is scheduled to be delivered. The customer will be liable for any costs incurred by the supplier prior to the cancellation of the order which shall become due on cancellation.
- 8) TAX
 - a) Except in the case of a customer who is not contracting in the course of a business nor holding himself out as doing so, the supplier reserves the right to charge the amount of any value added tax payable whether or not included on the estimate or invoice.
- 9) PRELIMINARY WORK
 - a) All work carried out, whether experimentally or otherwise, at the customer's request shall be charged at the supplier's then current standard rates.
- 10) COPY
 - a) A charge may be made to cover any additional work involved where copy supplied is not clear and legible.
 - b) A charge may be made where copy supplied in electronic form cannot be processed as it does not meet the resolution specification specified by the Supplier.
- 11) ELECTRONIC FILES

- a) It is the customer's responsibility to maintain a copy of any original electronic file.
- b) The Supplier shall not be responsible for checking the accuracy of supplied artwork or data from an electronic file unless otherwise agreed.

12) DATABASES/DATA PROTECTION

- a) Where the customer is required to supply to the supplier a database, such database shall be password protected and provided by electronic file transfer and be supplied in machine readable files in the format specified by the supplier. The customer will supply the database to the supplier within the time specified by the supplier to allow the supplier to perform its obligations under the contract.
- b) The customer acknowledges that the supplier is reliant on the customer for direction as to the extent to which the supplier is entitled to use and process 'personal data'. Consequently, the supplier will not be liable for any claim brought by an individual 'data subject' arising from any act or omission by the supplier, to the extent such act or omission resulted directly from the customer's instructions.
- c) Each party warrants to the other that it will process 'personal data' in compliance with all applicable laws, regulations, standards and similar instruments.
- d) The supplier warrants that, it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of 'personal data' and against the accidental loss or destruction of, or damage to, 'personal data'.
- e) The Customer warrants that any database supplied to the supplier does not infringe any third party intellectual property rights.

13) PROOFS

- a) Proofs of all work may be submitted for customer's approval and the supplier shall incur no liability for any errors not corrected by the customer in proofs so submitted. Customer's alterations and additional proofs necessitated thereby may be charged at the supplier's then current standard rates for amends and alterations.
- b) Where the Customer is asked to approve proofs this shall be done in a timely manner. The Supplier shall accept no responsibility, financial or otherwise for delay to either the delivery or mailing date caused by the customer's delay in approving proofs.

14) DELIVERY

- a) Delivery of work shall be accepted when tendered and thereupon or, if earlier, on notification that the work has been completed and then payment shall become due.
- b) Unless otherwise agreed the price quoted is for delivery of the work to the customer's address as set out in the estimate. The supplier may charge the customer for any additional costs incurred by the supplier for delivery to a different address.
- c) Should work be suspended at the request of or delayed through any default of the customer the supplier shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.

15) CLAIMS

- a) Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to the supplier and the carrier within three (3) clear days of delivery (or, in the case of no delivery, within fourteen (14) days of despatch of the goods) and any claim in respect thereof must be made in writing to the supplier and the carrier within seven (7) clear days of delivery. The supplier shall not be liable in respect of any claim unless the aforementioned requirements have been complied.

16) LIMITATION OF LIABILITY

- a) The supplier shall not be liable for any indirect or consequential loss of any nature or third party claims occasioned by delay in completing the work as a result of the customer's delay or default or for any loss to the customer arising from delay in transit.
- b) Where work is defective for any reason, including negligence, the suppliers' liability (if any) shall be limited to rectifying such defect. If the defect cannot be rectified, then the supplier's liability will be limited to the value of the work in dispute.

17) PAYMENT

- a) Payment shall become due and payable on dispatch of the goods unless credit terms have been agreed in advance. All payments shall be made in full and in cleared funds in accordance with the supplier's instructions and without any deduction, set-off, counterclaim or withholding other than any agreed settlement discount.
- b) If payment of any sum payable to the supplier is not received on or before the due date for payment then, without limiting the supplier's other rights and remedies, the supplier shall be entitled to charge interest thereafter on such sum at the rate of 8% per annum above the base rate of HSBC from time to time, such interest accruing on a daily

basis and being compounded on the last day of each calendar month from the due date until actual payment of the overdue amount (whether before or after judgment). Furthermore any other monies due to the supplier shall become immediately payable in full together with the overdue amount and all interest accrued thereon.

- c) In relation to payments disputed in good faith, the customer shall pay any undisputed amount on the due date for payment and in respect of the disputed amount, interest shall only be payable after the dispute has been resolved on sums found or agreed to be due from the due date until payment.
- d) Postage charges will be invoiced prior to the agreed mailing date. Payment of these charges must be received in advance of the mailing being released (unless otherwise agreed with the Supplier) and the supplier will not be liable for any delayed mailing caused by the customer's failure to pay such charges.

18) CUSTOMER'S PROPERTY

- a) Except in the case of a customer who is not contracting in the course of a business nor holding himself out as doing so, customer's property and all property supplied to the supplier by or on behalf of the customer shall while it is in the possession of the supplier or in transit to or from the customer be deemed to be at the customer's risk and should be insured accordingly.
- b) The supplier shall be entitled to make a reasonable charge for the storage of any customer's property left with the supplier before receipt of the order or after notification to the customer of completion of the work at a standard charge of £5 per pallet (or part pallet) per week.
- c) The supplier reserves the right to request in writing that customer's property be removed on the expiration of fourteen (14) days' notice from the supplier's premises subject to all related storage charges having been paid. The supplier retains the right to dispose of any property not removed at the customer's cost.

19) MATERIALS SUPPLIED BY THE CUSTOMER

- a) The supplier may reject any paper, envelopes or other materials supplied or specified by the customer, which appear to the supplier to be unsuitable. The supplier may charge additional costs if materials are found to be unsuitable during production unless the whole or any part of such additional costs could have been avoided but for unreasonable delay by the supplier in ascertaining the unsuitability of the materials.
- b) Where materials are so supplied or specified, the supplier will take every care to secure the best possible results, but liability will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified.
- c) Quantities of materials supplied shall be adequate to cover normal spoilage.

20) STOCK

- a) Unless otherwise agreed, where the supplier agrees to purchase and hold bespoke stock specified by the customer for later delivery, and for whatever reason that stock becomes obsolete, the customer shall pay in full at the agreed rate for the stock and authorise its destruction within thirty (30) days of the obsolescence date.

21) INTELLECTUAL PROPERTY RIGHTS

- a) Unless otherwise agreed, the supplier shall own and retain all intellectual property rights in any software written or developed by it or artwork or other materials developed specifically for the customer ('supplier IP').
- b) The supplier shall grant to the customer a non-exclusive non-transferable licence to the supplier IP for the customer's internal business purposes only and the Customer shall have no licence for any other use unless the supplier agrees otherwise.
- c) The customer owns all intellectual property rights in any data supplied by the customer and the supplier undertakes (at the cost of the customer) to return such data in a sequential file format if requested.

22) INSOLVENCY

- a) If the customer (being an individual) ceases to pay his debts or cannot pay his debts as they become due or has a bankruptcy petition issued against him (or being a partnership has any partner to whom any of the foregoing apply) or (being a company) is deemed unable or admits inability to pay its debts or has a winding-up petition issued against it, or is subject to an administration order or files notice of an intention to appoint an administrator, without affecting its other rights or remedies, the supplier shall:
 - i) have the right not to proceed further with the contract or any other work for the customer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the customer, such charge to be payable on demand; and
 - ii) in respect of all unpaid debts due from the customer have a general lien on all goods and property in its possession (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 as it thinks fit and to apply the proceeds towards such debts.

23) ILLEGAL MATTER

- a) The supplier shall not be required to print or otherwise publish any matter which in its reasonable opinion is or may be of an illegal, libellous or obscene nature or infringe the proprietary or other rights of any third party.

- b) The customer shall fully indemnify the supplier in respect of any claims, costs, damages and expenses (including legal expenses on a full indemnity basis) arising out of or in connection with the same.

24) FORCE MAJEURE

- a) The supplier shall not be in breach nor liable for any delay in performing, or failure to perform, its obligations if such delay or failure result from events, circumstances or causes beyond its reasonable control. During the continuance of such events or circumstances, the customer may by written notice to the supplier elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

25) GENERAL

- a) Variation: No variation to these terms or any contract made under them shall be effective unless agreed.
- b) Waiver: No failure or delay to exercise any right or remedy under these terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- c) Third party rights: No one other than a party to these terms shall have any right to enforce them.
- d) Credit referencing: We may transfer information about you to third parties for the following purposes: obtaining credit insurance, making credit reference agency searches, credit control assessment and analysis (including credit scoring, market, product and statistical analysis), and protecting our interests. We will provide you with details of such third parties on request.
- e) Governing law and jurisdiction: These terms shall be governed by and construed in accordance with English law and both parties hereby submit for all purposes of and in connection with these terms to the exclusive jurisdiction of the English Courts. MPS Marketing Services Limited Terms & Conditions (December 2016)