

## CONDITIONS OF TRADING

These conditions govern all supplies to customers by W & J Linney Ltd and or its subsidiaries (the "Company") of all goods and services ("Work"). The "Customer" means any person submitting an order to the Company. These conditions apply to the exclusion of any other terms and conditions.

**1. Quotations** - The Company may decline any Customer order upon receipt and may revise any quotation submitted by it at any time prior to its acceptance of the Customer's order. A contract for the supply to the Customer of Work (the "Contract") governed by these conditions will be formed upon the Company's acceptance of the Customer's order. The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from the Contract.

**2. Cost Variation** - Prices are subject to revision in the event of any increase in costs incurred by the Company between the date of its quotation or acceptance of the Customer's order, as appropriate, and the date of delivery of the Work to the Customer.

**3. Tax** - The Company may charge the amount of any Value Added Tax or similar tax payable on the supply of the Work whether or not included on its quotation or invoice.

**4. Preliminary Work and Overmatter** - Overmatter and work carried out whether experimentally or otherwise in relation to the preparation or execution of the whole or any part or parts of a Customer's request will be charged.

### **5. Proofs**

**5.1.** The Company shall incur no liability for any errors not corrected by the Customer where the Customer has been provided with proofs. The Customer's alterations and additional proofs necessitated thereby shall be charged extra. When style, type or layout is left to the Company's judgement, changes therefrom made by the Company shall be charged extra.

**5.2.** Where the Customer specifically waives any requirement to examine proofs the Company is indemnified by the Customer against any and all errors in the finished Work.

**5.3.** Due to differences in equipment, paper, inks and other conditions between colour proofing and production runs, a reasonable variation in colour between colour proofs and the completed job will be deemed acceptable unless agreed otherwise in writing.

### **6. Delivery and Payment**

**6.1.** Delivery of Work shall be accepted by the Customer when tendered and the whole price shall become due for payment by the Customer upon such tender or notification that the Work has been completed (whichever is the earlier).

**6.2.** Should expedited delivery be agreed by the Company and necessitate overtime or other additional costs for the Company an extra charge for the account of the Customer shall at the Company's discretion be made.

**6.3.** Should any Work be suspended at the request of or delayed through any action or default of the Customer for a period of 30 days the Company shall then be entitled to payment for Work carried out and materials specially ordered and other additional costs incurred by the Company including storage.

**6.4.** Where the Contract provides for more than one delivery of Work by the Company:

**6.4.1.** such deliveries shall be accepted as specified in the Customer's order (or as soon thereafter as ready) provided that all deliveries shall if ready be accepted within three months from the date specified for the first delivery. If the Customer fails to accept any delivery the balance remaining undelivered shall be invoiced (payment for such balance immediately thereupon becoming due) and storage costs charged to the Customer's account, the Work then after being held by the Company at the Customer's risk.

**6.4.2.** there shall be deemed to be a separate contract for each delivery and payment for each delivery shall be due for payment as specified in sub-clause 6.1. Any failure or defect in any one delivery shall not vitiate the Contract as to the remaining deliveries nor shall the Customer be entitled to set off against any price due to the Company for any delivery any claim it alleges against the Company for any other delivery.

**6.5.** Unless otherwise specified the price quoted is for delivery of the Work to the Customer's address set out in the relevant Company quotation. A charge may be made to cover any extra costs of the Company involved for delivery to a different address.

**6.6.** While every reasonable effort will be made by the Company to effect delivery in accordance with any pre-arranged dates, no guarantee as to dates of delivery by the Company can be implied and the Company will not accept liability for any loss or damage occasioned by delay in delivery howsoever caused.

**7. Variation in Quantity** - Every reasonable endeavour will be made to deliver the correct quantity of Work ordered by the Customer but quotations are given and Contracts entered into conditional upon margins of five per cent (5%) for Work in one colour only and ten per cent (10%) for other Work being allowed for overs or shortage, the same overs or shortage being charged to or deducted from the Customer's account, as appropriate.

### **8. Terms**

**8.1.** Payment in full without deduction or set off shall be made net cash before the 30th of each month following the month during which an invoice is submitted unless alternative credit terms are agreed between the Company and the Customer in writing.

**8.2.** If payment of any monies payable hereunder by the Customer shall not be made forthwith upon the due date for payment of the same the Company may charge and the Customer will then pay on demand interest upon the outstanding sum at four per cent (4%) above the Base Rate from time to time declared by Barclays Bank plc (or such other London Clearing Bank designated for this purpose by the Company) from the date the payment fell due until the date payment is made (whether before or after any judgement).

**8.3.** If the Contract involves more than one delivery of Work and default is made in payment on the due date for any one delivery the Company at its option may without prejudice to any other right or remedy:

**8.3.1.** treat the Contract as a whole as repudiated by the Customer and claim damages accordingly; or

**8.3.2.** suspend further deliveries or otherwise suspend further performance of the Contract in whole or in part until payment for deliveries on which payment is due have been made.

**8.4.** An order once placed by the Customer and accepted by the Company cannot be cancelled except by mutual agreement and then only on terms which would fully indemnify the Company for its losses resulting from such cancellation.

**8.5.** If the Customer breaches these conditions or any other obligation to the Company or if a distress or execution is levied upon the Customer's property or if the Customer makes or offers any arrangement or composition with its creditors or commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against him or if any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction in a state of solvency) is passed or presented or if a receiver of such company's undertaking property or assets or any part thereof shall be appointed the Company may determine the Contract without prejudice to any other claim or right of the Company. Forthwith upon such termination the Customer shall indemnify the Company in full against all loss suffered by the Company wholly or partly as a result of such an event or termination and all the monies then owing by the Customer to the Company shall become due for immediate payment.

### **9. Property and General Lien**

**9.1.** Delivery of Work by the Company to the Customer or at the Customer's discretion shall be deemed to be delivered to the Customer as agent and trustee for the Company. The property in any Work so delivered shall not pass to the Customer but shall be retained by the Company until payment has been made therefor and for all other monies then owing to the Company in full. Without prejudice to any other right or remedy of the Company for non payment or otherwise, the Company may peaceably re-possess such Work as has been delivered but not paid for wherever that may be and the Customer shall upon demand inform the Company of the whereabouts of all such Work. Where the Customer sells the Work or sells any rights therein or receives any money from any person or persons as a consequence of printing or agreeing to print or distributing the Work prior to paying the Company therefor in full, all such monies or proceeds of sale of such goods shall be held upon trust for the Company until full payment for the Work has been made to the Company by or for the Customer. All such monies or proceeds of sale received by the Customer in such event shall be placed in a separate bank account of the Customer containing no other monies and shall not in any way be mixed with any monies belonging to the Customer prior to payment to the Company.

**9.2.** Without prejudice to its other rights or remedies the Company shall in respect of all unpaid debts due from the Customer have a general lien on all goods and property of the Customer in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days written notice sent to the Customer at his last known address to dispose of such goods or property as it thinks fit and to apply any proceeds towards such debts. The Company shall not be liable for any proceeds towards such debts. The Company shall not be liable for any loss arising to the Customer from such action in any way whatsoever.

**9.3.** Where the Customer is in breach of these terms or performs any act of Bankruptcy or insolvency the Company reserves the right to approach the Customer's customer and to offer the Work directly to them, notwithstanding the fact that this will involve advising the customer that the Customer is in breach or default.

**9.4.** The Company may make a reasonable charge for storage of any property of the Customer left with the Company before acceptance of the Customer's order or after tender of the Work in question.

### **10. Standing Matter**

**10.1.** All film, film settings, negatives, positives, plates, electronic files, artwork (including digital artwork), sketches, samples and original designs of any kind used or created by the Company in connection with the Contract and all copyright, design right and other rights of any nature in the same shall remain the Company's exclusive property whether or not the work entailed in the production of these items is charged separately by the Company.

**10.2.** Type shall be distributed and film and plates, tapes, discs, electronic files or other work destroyed immediately after the order is executed unless written arrangements are made to the contrary. In the latter event, storage shall be charged.

**10.3.** The Company shall not be obliged to download any digital data from his equipment or supply the same to the Customer on disc, tape or by any communication link.

### **11. Claims**

**11.1.** All claims against the Company on whatever grounds under or in connection with the Contract must be notified to the Company in writing in accordance with the following provisions:

**11.1.1.** Claims arising from damage or partial loss of goods in transit must be made to the Company and the carrier used by the Company so as to reach both within three days of delivery of the Work.

**11.1.2.** Claims for non delivery of Work must be made within seven days of receipt of notice of their despatch.

**11.1.3.** All other claims must be made within ten days of the delivery of the relevant Work.

At the expiration of the said periods without lodgement of claim in the manner aforesaid the Company shall be deemed to have fulfilled its obligations under the Contract in every respect whether express or implied in any way whatsoever and the Customer shall make no complaint in respect of the Work forming the subject of the despatch.

11.2. The return of Work by the Customer will not be accepted unless the Company or its representative shall first have had a reasonable opportunity of examining the same.

## 12. Liability

12.1. Insofar as is permitted by law where Work is defective for any reason, including negligence, the Company's liability (if any) shall be limited to rectifying such defect, or crediting its value against any invoice raised in respect of the Work.

12.2. Where the Company performs its obligations to rectify defective Work under this condition the Company shall not be liable for indirect loss, consequential loss or third party claims occasioned by defective Work and the Customer shall not be entitled to any further claim in respect of the Work nor shall the Customer be entitled to repudiate the contract, refuse to pay for the work or cancel further deliveries.

12.3. Defective Work must be returned to the Company before replacements or credits can be issued. If the subject Work is not available to the Company the Company will hold that the Customer has accepted the Work and no credits or replacement Work will be provided.

12.4. The Company shall not be liable for indirect loss, consequential loss or third party claims occasioned by delay in completing the Work or for any loss to the Customer arising in delay in transit, whether as a result of the Company's negligence or otherwise.

12.5. Where the Company offers to replace defective Work the Customer must accept such an offer unless he can show clear cause for refusing so to do. If the Customer opts to have the Work re-done by any third party without reference to the Company the Customer automatically revokes his right to any remedy from the Company, including but not exclusively the right to a credit in respect of Work done by the Company.

12.6. Where the Work will be forwarded by or on behalf of the Customer to a third party for further processing the Customer will be deemed to have inspected and approved the Work prior to forwarding and the Company accepts no liability for claims arising subsequent to the third party's processing.

12.7. The Company reserves the right to reject any work forwarded to him after initial processing by a third party as soon as reasonably practicable without processing the work any further. Should the Customer require the Company notwithstanding to continue, then the Company is only obliged to do so after confirmation from the Customer in writing.

12.8. Nothing in these conditions shall exclude the Company's liability for death or personal injury as a result of its negligence.

## 13. Risk and Insurance

13.1. Notwithstanding that the property in the Work does not pass to the Customer until payment therefor is made to the Company in full, all goods, chattels and other property of or supplied by or on behalf of the Customer whatsoever in the Company's possession shall be held, worked on and carried at the Customer's risk in every respect. [The Company does however accept responsibility for loss or damage to such property resulting from its negligence.]

13.2. Any Work sent by the Company by post (or other means including by e-mail) to or at the direction of the Customer shall be so sent at the risk of the Customer.

13.3. Wherever the Company agrees to deliver the Work (whether or not the cost of delivery is included in the price or is in addition to the price of the Contract) the risk of any loss or damage to or deterioration of the Work from whatever cause shall be borne by the Customer (unless the risk had already passed to the Customer under the previous conditions) and the Work shall be at the risk of the Customer in all respects from the time that the same is despatched from the premises of the Company or any sub contractor of the Company.

13.4. The Customer shall effect all such insurances as it shall consider necessary to protect its interests in any goods or property which under these conditions are stated to be at the risk of the Customer.

14. **Material** - While every reasonable endeavour will be made to supply Work in accordance with the quality of samples submitted or quoted by the Company this cannot be guaranteed.

## 15. Material Supplied by Customer

15.1. It is the Customer's responsibility to maintain a copy of any original Electronic File provided by the Customer.

15.2. The Company reserves the right to reject any paper, copy, artwork, electronic files, films, plates or other materials supplied or specified by the Customer which would appear to it to be unsuitable for use in connection with the Contract. The Company is not obliged to check or verify the quality, accuracy, sufficiency or suitability of the same. Additional costs incurred by the Company as a result of materials being found to be unsuitable during production may be charged to the account of the Customer by the Company.

15.3. Where materials are so supplied or specified the Company shall not be liable in any way for any defect shortfall in compliance with specified requirements or loss resulting from or to the extent that it results from or is contributed to by such materials or any quality characteristic unsuitability or defect in the same or their use in connection with the Contract or which would not have resulted had suitable materials been used.

15.4. Quantities of Work supplied shall be adequate to cover normal spoilage.

## 16. Illegal Matter

16.1. The Company shall not be required to print any Work which in its opinion is or may be of an illegal, unlawful or libellous nature or which might involve any infringement of any third party intellectual property or other rights or which would otherwise involve any criminal, contractual or tortious liability of any kind.

16.2. In the event that any complaint claim action proceedings or prosecution is brought or made against the Company in respect of or arising in any way from any matter or thing appearing in or on any goods or material printed processed or dealt with for the Customer by the Company whether such matter or thing is or alleged to be illegal, unlawful, libellous, in breach of infringement of copyright, trademark, patent, design or any other third party right whatsoever of any nature and whether such complaint, claim action or proceeding is settled, compromised or litigated in any way whether through to and/or beyond any judgement or appeal or discontinued abandoned or struck out for want of prosecution or otherwise left or dealt with in any way and as a

result the Company incurs any cost loss damage liability or penalty of any kind the Customer shall forthwith upon the Company's first written demand indemnify the Company in full in respect of such cost loss damage liability or penalty without enquiry or question and without exercising any right of set off counter claim or cross demand of any nature against the Company.

## 17. Periodical Publications

17.1. A contract for the printing by the Company of a periodical publication (a "Periodical Contract") may not be terminated by either party unless 13 weeks notice in writing is given to the other in the case of periodicals produced monthly or more frequently or 26 weeks notice in writing is given in the case of other periodicals. Notice may be given at any time but wherever reasonably possible should be given after completion of printing on any one issue. Nevertheless the Company may terminate any such contract forthwith should any sum due thereunder remain unpaid and outstanding.

17.2. If the Customer terminates a Periodical Contract by giving less than the required period of notice specified under clause 17.1 then the Customer shall pay to the Company a sum by way of liquidated damages calculated in accordance with the provisions of clause 17.3 and both the Customer and the Company agree that such sum is a genuine pre estimate at the time of making that contract of the Company's loss in the event of the Customer so terminating the contract.

17.3. For each week or any part thereof for which the Customer fails to give the Company notice to terminate a Periodical Contract in accordance with clause 17.1 the Customer shall pay to the Company a sum equal to one quarter of the average price charged to the Customer by the Company for the last six issues of the periodical in question printed (or in the event of the Company having printed less than six issues of the periodical for the Customer the liquidated damages shall be calculated upon the average price charged to the Customer for so many issues of the periodical as may have been printed by the Company for the Customer) multiplied by the number of issues of the periodical that would have been printed by the Company in the remainder of the notice period had proper notice been given under clause 17.1.

17.4. Following termination of a Periodical Contract, the Company may on the expiration of fourteen days notice to the Customer dispose of all property of the Customer in its possession (including the publications) and apply any proceeds towards monies due to it hereunder and the Company shall not be liable to the Customer for any loss arising from any such disposal.

18. **Force Majeure** - The Company's obligations under the Contract will be suspended to the extent that it is prevented or hindered from complying by any cause beyond its reasonable control including but not limited to an action of a third party or the Customer, unlawful or unauthorised use of or access to the Company's systems, governmental intervention, labour disputes or the breakdown or interruption of third party systems or machinery. The Company will use reasonable endeavours to remedy such cause and will resume the performance of such obligations as soon as reasonably possible after the removal of the cause.

19. **Severability** - If any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question is not affected.

## 20. E-commerce transactions

20.1. To the extent permitted by English law, the Company and the Customer may conduct transactions using an electronic commerce approach under which they will electronically transmit and receive legally binding purchase and sale obligations including electronic credit entries transmitted by the Customer to the Company's bank account in such manner as may be notified by the Company to the Customer from time to time ("Electronic Communications"). For the purposes of this condition 20, the "originating party" will mean the party transmitting an Electronic Communication and the "receiving party" will mean the party receiving such a communication.

20.2. If the parties choose to conduct transactions pursuant to the provisions of condition 20.1 then:-

20.2.1. the Customer will provide and maintain the equipment, software, services and testing facilities necessary for it to effectively and reliably transmit and receive Electronic Communications.

20.2.2. either party may use a third party service provider for network services provided that the other party is given sixty (60) days prior written notice of any changes to such services.

20.2.3. an Electronic Communication will be deemed received upon arrival at the receiving party's mailbox at the Internet address notified to the receiving party by the originating party from time to time or, where the Company is the receiving party, when the Electronic Communication is accessed by it in intelligible form. The receiving party will promptly notify the originating party if an Electronic Communication is received in an unintelligible form providing that the originating party can be identified. In the absence of such notice, the originating party's record of the contents of such Electronic Communication will prevail.

20.2.4. Each party will authenticate documents using a digital signature or User ID (an "authentication"), as specified by the Company, and will maintain security procedures to prevent its unauthorised use. Each party agrees that any authentication contained in any transmitted document will be sufficient to confirm such party originated such Electronic Communication.

20.3. Each party shall furnish to the other a list of individuals authorised by it to transmit Electronic Communications and the appropriate authentication. Each party will maintain security provisions to prevent the unauthorised disclosure of such information.

21. **Assignability** - The Company may freely assign or sub-contract all or any of its rights and obligations under this Contract.

22. **Notices** - Notices required or permitted to be given under these Conditions must be in writing and addressed to the relevant party at its registered office or principal place of business.

23. **Data Protection** - The Customer is hereby notified that the Company may transfer personal information about the Customer to a Credit Agency.

24. **English law** - These conditions and all other express terms of the contract shall be governed and construed in accordance with the laws of England and any dispute shall be settled in the English courts.

# Linney Design Terms and Conditions

## Definitions and Interpretation

1.1 In these Conditions: -

“**Acceptance Date**” means the date upon which the Software is deemed accepted by the Customer pursuant to clause 4.2 of these Conditions

“**Conditions**” means the conditions set out in this document and (unless the context otherwise requires) includes any supplemental or special conditions appearing or referred to on the Estimate

“**Company**” means Linney Design Limited

“**Contract**” means the contract for the supply by the Company to the Customer of the Services, Materials and/or the Software

“**Customer**” means the person named in the Estimate

“**Designated Equipment**” means the Customer’s computer equipment upon and in conjunction with which the Software is to be installed and used as identified in the Estimate

“**Documentation**” means the documentation supplied by the Company in connection with the Software and/or Services

“**Equipment**” means the computer hardware, network and associated peripherals equipment specified in the Specification or such other equipment as may be agreed from time to time, whether such equipment is operated by the Customer or a third party on the Customer’s behalf or operated by the Company pursuant to a website hosting agreement

“**Estimate**” means the Company’s written quotation for the supply of Services, Materials and/or Software as varied, where applicable, by the Company’s written order confirmation

“**Intellectual Property Rights**” means patents, trade marks, Internet domain names, registered designs, applications for any of the foregoing, copyright, design rights, know-how, confidential information, database rights, trade and business names and any other similar protected rights in any country

“**Licensed Materials**” means the Software and associated Documentation

“**Materials**” means any and all works of authorship including, without limitation, artwork, designs or other materials (excluding Software) which the Company is to provide to the Customer pursuant to the Contract

“**Services**” means the graphic design, website design, website hosting, software development and/or other services described in the Estimate

“**Site**” means the location(s) at which the Software is to be installed and used and/or the Installation Services to be provided, as indicated in the Estimate

“**Software**” means the software (standard or bespoke) to be supplied by the Company to the Customer as specified in the Estimate

“**Specification**” means the written specification (if any) for the Services, Materials and/or Software referred to or contained in the Estimate, as the same may be amended from time to time in accordance with these Conditions or with the written agreement of the Company

“**Third Party Software**” means the third party software (if any) specified in the Estimate

“**Use the Software**” means load the machine executable form of the Software and store and run it on the Designated Equipment

“**Use the Licensed Materials**” means use the Software, use the Documentation in conjunction with the use of the Software and possess the media upon which the Software is stored and delivered to the Customer

“**Website**” means the website to be developed by the Company pursuant to the Contract, being a compilation of one or more pages combining text, data, sound, images or other material which is designed to be accessible over the Internet at a domain name address and which is more particularly described in the relevant Specification.

1.2 Reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2 The Supply

2.1 The Company shall supply and the Customer shall purchase the Services, Materials and/or Software subject to these Conditions which shall govern the Contract to the exclusion of any other terms.

2.2 The provision of Software and Website maintenance and support services required by the Customer shall be governed by the Company’s separate Support and Maintenance Agreement.

2.3 The Company shall only be bound by an order when written confirmation of the order has been given by the Company to the Customer.

- 2.4 No variation to these Conditions shall be binding unless approved in writing by a director of the Company.
- 2.5 Subject to any variation in accordance with clause 2.4, these Conditions embody the entire understanding of the parties and override any prior promises, undertakings or representations (though nothing contained in these Conditions shall operate to limit or exclude the liability of either party for fraud).
- 2.6 The Company shall supply the Third Party Software and shall procure that the relevant third party ("Third Party Licensor") licenses the Third Party Software to the Customer on the standard terms of the Third Party Licensor. The Company shall be responsible for the fees charged by the Third Party Licensor to license the Third Party Software to the Customer for the number of concurrent users specified in the Estimate or Specification. The Company gives no assurances about the Third Party Software and the Customer acknowledges that its only remedy concerning any fault or problem in respect of the Third Party Software is the right it has against the Third Party Licensor under the licence of the Third Party Software.
- 2.7 Any error or omission in any sales literature, quotation, price list, invoice, specification or other document or information issued by the Company is subject to correction without any liability to the Company.
- 2.8 Where it is specified in the Estimate that the Company will provide modifications to the Website, then, subject to clause 2.9 below, the Company shall, as soon as reasonably practicable, amend, modify or replace any of the Web Pages with such new material or replacement pages as may from time to time be supplied by the Customer to the Company.
- 2.9 The Company reserves the right to refuse to carry out such amendments, modifications or replacements where, in its reasonable opinion such amendments, modifications or replacements are or are likely to be construed as being illegal, obscene, threatening, defamatory, discriminatory, promoting illegal or unlawful activity, or are otherwise actionable or in violation of any rules, regulations or laws to which the Website is subject. The Company shall immediately notify the Customer in writing and state in reasonable detail, the reason for such refusal.
- 2.10 Without prejudice to clause 6.5 of the Supplemental Conditions of Hosting and SLA Agreement, the Company shall not amend, modify or replace or alter in any way any of the Web Pages at any time without the prior written approval of the Customer.

### **3 Orders and Specifications**

- 3.1 The Customer is responsible to the Company for:
- 3.1.1 ensuring the accuracy and lawfulness of any specification, information or materials (whether in written, electronic or other form) submitted by the Customer for use in connection with the provision by the Company of the Services;
- 3.1.2 providing promptly all such information, data and assistance as the Company reasonably considers necessary for the purpose of enabling it to provide the Services.
- 3.2 The quantity, quality and description of the Services, Materials and/or Software is as set out or referred to in the Estimate. Any other descriptive material provided by the Company is provided only to assist the Customer and does not form part of the Contract.
- 3.3 The Contract may not be cancelled by the Customer save with the Company's written agreement and on terms that the Customer is to indemnify the Company in full against all loss (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 cancellation.
- 3.4 To the extent that Specifications for the Website and, where applicable, the Software, have not been agreed as at the date of the Contract, the Company shall develop the relevant Specification(s) as the first phase of the Contract and submit the same for the Customer's written approval. The Customer shall not unreasonably withhold or delay such approval.
- 3.5 The Company shall not be obliged to undertake any further work in connection with the development of the Website and/or the Software (as the case may be) until the relevant Specification has been approved in writing by the Customer. [The Company shall provide the Customer with its revised estimate of costs for completion should the Specification be revised by Customer.]
- 3.6 If at any time before the Customer's acceptance of the Website or Software, the Customer wishes to alter all or any part of the relevant Specification then the Customer shall provide the Company with full written particulars of the desired alterations and with such further information as the Company may reasonably require.
- 3.7 The Company shall then submit to the Customer as soon as reasonably practicable a full written quotation for such alterations, specifying what changes (if any) will be required to the charges payable by the Customer and to the Specification.
- 3.8 Within 7 days following the Customer's receipt of the quotation the Customer shall notify the Company whether it wishes to: accept such quotation, in which case the Contract and Specification shall be amended in accordance with it; or withdraw the proposed alterations, in which case the Contract and Specification shall continue in force unchanged.

### **4 Software Licence and Obligations**

- 4.1 Where installation by the Company is specified in the Estimate, the Company shall install one copy of the Software in machine executable form on the Designated Equipment at the Site unless specified otherwise. Where installation is not specified, the Company shall deliver the Software on the media specified in the Estimate.

- 4.2 Where installation is provided by the Company, the Software shall be deemed accepted by the Customer upon the Company informing the Customer that the same has been successfully installed upon the Designated Equipment. Where installation is not provided by the Company, acceptance shall be deemed to take place on delivery of the Software to the Customer.
- 4.3 With effect from the Acceptance Date, the Company grants to the Customer a non-exclusive non-transferable licence to Use the Licensed Materials for its internal data processing requirements only (the "Licence"). The Customer shall not permit any third party to use the Licensed Materials nor use the same on behalf of any third party in any way. The Licence does not include authority to grant sub-licences of the Software.
- 4.4 The Licence is limited to the use of the Licensed Materials upon the maximum number of servers and with access to the same by the maximum number of client PC's or laptops ("Clients") specified in the Estimate. The Customer acknowledges that additional licence fees are payable for additional Clients having access to the Licensed Materials.
- 4.5 Except to the extent and in the circumstances expressly permitted by law, the Customer shall not alter, modify, adapt or translate the whole or any part of the Software in any way nor permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs nor decompile, disassemble or reverse engineer the same nor attempt to do any such things.
- 4.6 The Customer shall keep possession of and control over the Licensed Materials provided to it and shall effect and maintain adequate security measures to safeguard the Licensed Materials from access or use by any unauthorised person.
- 4.7 The Customer may use the Licensed Materials only at the Site or such alternative UK location as the Customer may have notified to the Company in writing in advance of the move to the new location.
- 4.8 The use of Licensed Materials is restricted to use on or in conjunction with the Designated Equipment or such other equipment as may from time to time be approved by the Company in writing as suitable (such approval not to be unreasonably withheld).
- 4.9 The Licensed Materials and all copyright and other intellectual property rights in them shall remain the property of the Company. The Customer shall notify the Company immediately if it becomes aware of any unauthorised use of the whole or part of the Licensed Materials by any person. The Customer shall permit the Company to check the use of Licensed Materials by it at reasonable notice and times and for that purpose the Company, its employees and agents may enter the Customer's premises.
- 4.10 The Customer may make only so many copies of the Licensed Materials as are reasonably necessary for back-up purposes, unless stated otherwise. Such copies and, save in the case of copies comprised within system-wide back-ups ("System Copies"), the media on which they are stored shall be the property of the Company and the Customer shall ensure that such copies (other than System Copies) bear the Company's proprietary notices. The Licence shall apply to all such copies as it applies to the Licensed Materials.
- 4.11 Where any Installation Services are to be provided at the Site, the Customer shall:-
- 4.11.1 provide the Company with full and safe access to the computer equipment, software and network links in respect of which the Software is or is to be used and/or the Services are to be provided;
- 4.11.2 ensure for health and safety reasons that the Company's personnel, upon or prior to entering Customer premises for the purposes of the Contract, are made familiar with the Customer's premises and safety procedures and have access, at all times while on those premises, to a member of the Customer's staff familiar with Customer premises and safety procedures;
- 4.11.3 make available to the Company such program, systems, operating manuals, facilities and information as may be necessary to enable the Company to perform its obligations under the Contract and shall, if requested by the Company, provide staff familiar with the Customer's programs and operations, which staff shall co-operate fully with the Company's personnel in the performance by the Company of the Contract;
- 4.11.4 carry out or have carried out such work in relation to the Customer's computer system in connection with which the Software is to be used as may reasonably be required by the Company in order to enable it to provide the Services.
- 4.12 The Customer shall keep the Company fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatever nature arising out of or in connection with any claim that the use by the Company of any software, facility, information or material supplied by the Customer for the purpose of enabling the Company to provide the Installation Services infringes the rights of any third party or is otherwise in breach of law.
- 4.13 If the Customer does not carry out any such work as is referred to at clause 4.11.4 above by the time the Company is scheduled to commence the relevant Services, the Company may, at its sole discretion and without prejudice to its other rights and remedies, carry out such work and charge the Customer in accordance with its standard charges and rates from time to time in force.

## 5 **Price**

- 5.1 The price for the Services, Materials and Software shall be as set out in the Estimate. Subject to clause 5.2, all prices quoted are valid for 90 days or until earlier acceptance by the Customer, after which time they may be altered by the Company without notice.
- 5.2 The Company may by giving notice to the Customer at any time before delivery, increase the price of the Software, Materials and/or Services to reflect any increase in the cost to the Company due to:
- 5.2.1 any factor beyond the reasonable control of the Company (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of production);
- 5.2.2 any change in delivery dates or performance, quantities or specifications for the Services, Materials and/or Software requested by the Customer; or
- 5.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 5.3 Except where otherwise specified in the Estimate, the Customer is liable to reimburse to the Company any reasonable expenses properly incurred by the Company in performing any Services.
- 5.4 Unless otherwise indicated in the Estimate, the quoted price is exclusive of any applicable VAT or other sales tax, which the Customer shall, where applicable, pay in addition in the manner and at the rate from time to time prescribed by law.
- 5.5 All prices are subject to sight of final copy. Unless specified, prices do not allow for any keying in of copy supplied and are based on the provision of copy supplied on disk by you. Prices do not include any provision for authors' corrections made after the first complete set of proofs supplied to you at any stage during production. These would be invoiced as a separate figure along with any despatch necessary for the completion of this project.
- 5.6 Printing prices are based on today's price of paper for a delivery currently in stock. Every endeavour will be made to deliver the correct quantity ordered but quotations are conditional upon margins of five per cent for work in one colour only and 10 per cent for other work being allowed for overs or shortages the same being charged or deducted.

## 6 **Payment**

- 6.1 Except where otherwise stated in the Estimate the Company may invoice the Customer for the price of the Software, Materials and/or Services on or at any time after their delivery or, in the case of Materials or Software, after delivery is tendered by the Company in accordance with the Contract.
- 6.2 Except where otherwise stated in the Estimate, the Customer shall pay the price of the Services, Materials and Software in full within 30 days of the Company's invoice. The Company may recover the price notwithstanding that delivery may not have taken place and title in the Materials not passed to the Customer. Time of payment of the price is of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3 For projects which exceed two months duration from commencement, costs incurred will be progress invoiced at the end of each month for payment within 30 days invoice.
- 6.4 All invoices shall be paid in full without deduction or set off, in UK Sterling and by such means as the Company shall determine from time to time.
- 6.5 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy of the Company, the Company may:-
- 6.5.1 cancel the Contract pursuant to clause 12.1.1 below or suspend the Services and any further deliveries to the Customer;
- 6.5.2 appropriate any payment made by the Customer to such of the Materials, Software and/or Services (or materials, software or services supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- 6.5.3 charge the Customer interest (before and after any judgment) on the amount unpaid, at the rate of 4% per annum above Barclays Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 7 **Delivery**

- 7.1 Delivery of Materials or Software is made by the Customer collecting the Materials or Software from the Company's premises after the Company has notified the Customer that the same are ready for collection or, if some other place for delivery is agreed in writing by the Company, by the Company delivering the Materials or Software to that place (whether in hard form, electronically or otherwise). Delivery of Services takes place upon completion of the performance of such Services.
- 7.2 Dates quoted for delivery of Materials or Software or performance of Services (where relevant) are approximate only and the Company is not liable for delay in delivery or performance however caused. Materials or Software may be delivered in advance of the quoted delivery date upon the Company giving reasonable notice to the Customer. Time of delivery or performance shall not be of the essence of the Contract.

### **Delivery and Acceptance of the Website**

- 7.3 The Company shall (upon request if hosted at Linney Design Ltd) undertake all Website development work on its own servers. The Customer shall accept the Website upon the Company demonstrating that the Website (as installed on the Company's servers) complies, in all material respects, with its Specification.
- 7.4 Following acceptance of the Website, the Company shall deliver to the Customer a copy of the Website on CD-Rom (or such other computer media as the Customer may reasonably request), along with a list detailing any special configurations required to host the Website. Where the Estimate indicates that the Company will provide such a Service, the Company shall install the Website on the Equipment.

### **Delivery and Acceptance of the Software**

- 7.5 Where the Estimate indicates that the Company will provide such a Service, the Company shall install the Software on the Equipment. Where installation is not to be undertaken by the Company, the Company shall deliver the Software to the Customer on the media and together with any operating manuals specified in the Specification.
- 7.6 The Customer shall accept the Software upon the Company demonstrating that the Software (as installed on the Company's servers) complies, in all material respects, with its Specification. If at any time the Customer shall commence live running of the Software or any part of the Software, then the Customer shall be deemed to have accepted the Software.

## **8 Risk and Title**

- 8.1 Risk in Materials passes to the Customer:
- 8.1.1 where delivery is to take place at the Company's premises, when the Company notifies the Customer that the Materials are available for collection; or
- 8.1.2 where delivery is to take place other than at the Company's premises, on delivery or, if the Customer wrongfully fails to take delivery of the Materials, when the Company tenders delivery.
- 8.2 Notwithstanding delivery, passing of risk in the Materials or any other provision of these Conditions, title in Materials does not pass to the Customer until the Company has received in cash or cleared funds full payment of the price of the Materials and/or Services and all other materials and/or services to be supplied by the Company to the Customer for which payment is then due.
- 8.3 Until title in the Materials passes to the Customer, the Company may require the Customer to deliver up the Materials to the Company and, if it fails to do so, may enter upon any premises of the Customer or third party where the Materials are then kept and repossess the same.
- 8.4 The Customer may not pledge or charge by way of security any Materials owned by the Company, but if the Customer does so all moneys owing by it to the Company become (without prejudice to any other right or remedy of the Company) due and payable.

## **9 Intellectual Property Rights**

- 9.1 Upon payment by the Customer of all sums due to the Company under the Contract, all Intellectual Property Rights in those Materials produced specifically in connection with the development of the Website (and therefore excluding all generic and pre-existing software, tools, designs and other materials utilised by the Company in connection with services performed for any third party ("**Generic Items**")) shall belong to the Customer. The Company shall, at the request and expense of the Customer, execute all such documents and do all such things as may be necessary to vest such Intellectual Property Rights in the Customer.
- 9.2 With effect from delivery of the Website (and except as otherwise indicated in the Estimate), the Company grants to the Customer a perpetual, non-exclusive, royalty-free licence (without the right to grant sub-licences) of all Intellectual Property Rights in the Generic Items in so far as is necessary to enable the Customer to operate, maintain and update the Website.
- 9.3 With effect from acceptance by the Customer of the Software, the Company grants to the Customer a perpetual, non-exclusive, non-transferable royalty-free licence (without the right to grant sub-licences) to use the Software in connection with the operation, maintenance and updating of the Website.
- 9.4 For the avoidance of doubt, nothing in clause 9.1 shall prevent the Company from using, in the furtherance of its normal business, website development tools, techniques and skills, data processing techniques, software programming or development techniques, ideas and know-how which existed prior to the Contract or were gained during the performance of the Services.

## 10 **Warranties and Liability**

- 10.1 The Company warrants that it will provide the Services (including the Installation Services) with reasonable care and skill. Any applicable supplemental warranties are set out in the Company's supplemental conditions relevant to the Materials, Software or Services to be supplied.
- 10.2 The Company warrants to the Customer that:
- 10.2.1 upon acceptance, each of the Website and the Software will, when properly used on the Equipment or, where appropriate, the Designated Equipment, comply in all material respects with its Specification;
- 10.2.2 as at delivery, the media on which the Website and Software are provided will be free from defects in materials or workmanship.
- 10.3 Without prejudice to clause 10.2.1 above, the Company does not warrant that the Software will meet the Customer's data processing requirements or that the operation of either the Website or the Software will be error-free.
- 10.4 The Customer shall give notice to the Company as soon as it is reasonably able upon becoming aware of a breach of the warranty contained in clause 10.2.
- 10.5 Subject to the Customer complying with clause 10.4 and providing (where possible) a documented example of the relevant defect or failure, the Company shall remedy any breach of the warranties set out at clauses 10.1 and 10.2 by the provision of remedial services (including at the Company's option replacement of defective items) free of charge. The Company shall have no liability or obligation under that warranty or obligation other than to remedy breaches of it in accordance with this clause 10.5.
- 10.6 Except as expressly provided in the Contract, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the Services, Materials or Software are excluded to the fullest extent permissible by law.
- 10.7 Except in the case of death or personal injury caused by the Company's negligence (in respect of which the Company's liability shall be unlimited) and except for any other matters for which the Company's liability may not by law be restricted or excluded, the Company's total liability in respect of any contractual breach or representation, statement or tortious act or omission arising under or in connection with the Contract (a "Default") shall not exceed:-
- 10.7.1 in the case of a Default relating to Services comprising website hosting or software support and maintenance, the total sums paid or payable by the Customer in the preceding 12 month period in respect of those Services;
- 10.7.2 in all other cases, one and a half times the total sums paid or payable by the Customer to the Company under the Contract.
- 10.8 Notwithstanding anything else contained in these Conditions (and without limiting the Company's liability in respect of injury to or death of any person caused its negligence) the Company shall not be liable to the Customer for:
- 10.8.1 any loss of profits, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) whether arising from negligence, breach of contract or otherwise howsoever;
- 10.8.2 any defect in the Materials, Software and/or Services arising from any drawing, design, specification or other information supplied by the Customer, whether in written, electronic or other format;
- 10.8.3 any hacking or hacks which occur and the effects of these in respect of the Customer's business and data, systems and/or the Customer's Material and/or any Website PROVIDED THAT the Company shall use its reasonable endeavours to ensure that all services provided by it are free from third party influences at the time of supply.
- 10.9 If a number of Defaults give rise to substantially the same loss then they shall be regarded as the same Default for the purpose of calculating the Company's maximum liability pursuant to clause 10.7.
- 10.10 Any computer hardware or other equipment purchased by the Company in connection with the provision of the Services shall be purchased by the Company as the Customer's agent and, accordingly, the Company shall have no liability to the Customer in respect of such hardware or other equipment.
- 10.11 The Company shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing, or failure to perform any of the Company's obligations under the Contract if the delay or failure was due to any cause beyond the Company's reasonable control including but not limited to an action of a third party or the Customer, unlawful or unauthorised use of or access to the Company's systems, governmental intervention, labour disputes or the breakdown or interruption of third party systems or machinery.
- 10.12 Whilst the Company has taken reasonable steps to prevent the introduction of computer viruses, it cannot guarantee that viruses will not enter the Customer's systems through, via or as a result of the Company's systems or the provision of the Services, the Software and/or Materials. Accordingly, the Company shall not have any liability whatsoever (whether for breach of contract, negligence or otherwise) for any such entry where reasonable steps have been taken by or on behalf of the Company to prevent the same.
- 10.13 Notwithstanding the other provisions of this condition 10, the Company does not warrant that any concepts supplied by the Company to the Customer (in respect of pitches, tenders or otherwise) do not infringe any existing third party intellectual property rights and the Company shall not be liable for any damages, costs or losses whether direct or indirect (and including, without limitation, loss of profits, loss of business and loss of goodwill) arising out of any claim by any third party relating to the concepts proposed by the Company.
- 10.14 In relation to the Software, the Company shall not be liable to the Customer for any loss arising out of any failure by the Customer to comply with its obligations under the Contract or resulting from:

- 10.14.1 use of the whole or any part of the Software with any equipment and/or software not specified in the Specification or approved by the Company for use in connection with the Software;
- 10.14.2 repair, adjustment, alteration or modification of any part of the Software not undertaken by the Company or its sub-contractor;
- 10.14.3 operator error, failure or error in operating or other software or any defect in the Designated Equipment;
- 10.14.4 Customer failure to keep restorable back-up and/or security copies of data.

## 11 **IPR Indemnity**

- 11.1 The Company shall indemnify the Customer against any claim that the Customer's normal use or possession of the Materials or the Software in accordance with the Contract infringes the intellectual property rights of any third party PROVIDED THAT:
  - 11.1.1 the Company is given immediate and complete control of such claim;
  - 11.1.2 the Customer does not prejudice the Company's defence of such claim;
  - 11.1.3 the Customer gives the Company all reasonable assistance with such claim;
  - 11.1.4 the claim does not arise as a result of the use of the Software in combination with equipment or programs not specified in the Specification or approved in writing by a director of the Company;
  - 11.1.5 the claim does not arise as a result of the inclusion within the Materials or Software of materials provided by the Customer for such inclusion.
- 11.2 The Company shall have the right to replace or modify all or any part of the Materials or Software in order to avoid a third party infringement claim or if this cannot be achieved on terms which the Company considers reasonable, take back the relevant Materials or the Software and refund the sums paid by the Customer under the Contract in respect of the supply of those Materials or the Software.
- 11.3 This clause 11 states the entire liability of the Company to the Customer in respect of any infringement of the intellectual property rights of any third party.
- 11.4 The Customer shall indemnify the Company and keep the Company fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatever nature arising out of or in connection with any claim that the use by the Company or its sub-contractors of any software, information or material supplied by the Customer for the purpose of enabling the Company to develop the Website or the Software infringes the intellectual property or other rights of any third party.

## 12 **Termination**

- 12.1 The Company may terminate the Contract forthwith by notice in writing to the Customer if the Customer:-
  - 12.1.1 fails to pay any sum due under the Contract by the due date;
  - 12.1.2 commits a breach of any other term of the Contract provided that if the breach is capable of remedy (being actual remedy as opposed to remedy by payment of damages or compensation) the notice shall only be given if the Customer shall not have remedied the same within 30 days of having been given notice in writing specifying the breach and requiring it to be remedied; or
  - 12.1.3 has a winding up petition presented against it and does not make an application to set aside the same within 7 days or goes into liquidation whether compulsorily or voluntarily (unless as part of a bona fide scheme for amalgamation or reconstruction first approved in writing by the Company), becomes subject to an administration order, has a receiver or administrative receiver appointed over or encumbrancer take possession of the whole or any part of its assets, compounds with its creditors or any class of the same, ceases to carry on its business or threatens to cease the same or becomes unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986; or
  - 12.1.4 being an individual, has a bankruptcy order made against him or, being a partnership, has a bankruptcy order made against any of the partners or a notice served by a partner for the dissolution of the partnership.
- 12.2 In the event of any termination under clause 12.1, then if any Materials or Software have been delivered or Services supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12.3 Termination of the Contract for any reason shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.4 Upon termination of the Contract for any reason, the Licence granted at clause 4.3 above shall also terminate and the Customer shall immediately cease using the Software. In addition, the Customer shall, at the Company's option, either return to the Company or destroy all copies of such Software and associated Documentation. If the Customer so wishes to have rights and ownership of the source code for that particular application once terminated then this will be, by separate negotiation with the Company.

### 13 **E-commerce Transactions**

- 13.1 Unless agreed in writing by a director of the Company, the Company's representatives are not authorised to enter into legally binding purchase and sale obligations with the Customer by e mail or other electronic communication ("Electronic Communication"). Where such agreement is given, the following provisions of this clause 12 shall apply. For the purposes of this clause 13, the "originating party" will mean the party transmitting an Electronic Communication and the "receiving party" will mean the party receiving such a communication.
- 13.2 The Customer shall provide and maintain the equipment, software, services and testing facilities necessary for it to effectively and reliably transmit and receive Electronic Communications.
- 13.3 Either party may use a third party service provider for network services provided that the other party is given sixty (60) days prior written notice of any changes to such services.
- 13.4 An Electronic Communication shall be deemed received upon arrival at the receiving party's mailbox at the Internet address notified to the receiving party by the originating party from time to time or, where the Company is the receiving party, when the Electronic Communication is accessed by it in intelligible form. The receiving party shall promptly notify the originating party if an Electronic Communication is received in unintelligible form providing that the originating party can be identified. In the absence of such notice, the originating party's record of the contents of such Electronic Communication will prevail.

### 14 **Confidentiality and Personal Data**

- 14.1 Each party shall keep confidential all information obtained from the other pursuant to or in contemplation of the Contract, shall use the same only for the purposes of the Contract and shall not disclose such information to any person (except to its own employees or, in the case of the Company, its sub-contractors and then only to those employees or sub-contractors who need to know the same) without the other's prior written consent. In addition, the Customer shall keep confidential and not disclose (except as mentioned) any terms of the Contract.
- 14.2 The obligations of the parties pursuant to clause 14.1 shall not extend to any information which was rightfully in the possession of the receiving party (and at its free disposal) prior to the commencement of negotiations leading to the Contract; which is already public knowledge or becomes so at a future date otherwise than as the result of a breach of this clause 11; which is trivial or obvious; or whose disclosure is required (and to the extent that it is required) by law.
- 14.3 Where personal data (as defined in section 1(1) of the Data Protection Act 1998) is disclosed to the Company and processed by the Company as part of the performance of the Services, the Customer shall be responsible for obtaining all necessary consents and approvals to ensure that such processing is carried out in accordance with the Act and shall provide evidence of such consents and approvals to the Company on request.

### 15 **General**

- 15.1 During the period during which the Company is providing any Services to the Customer and for a period of six months thereafter the Customer shall not (whether personally or by its agent and whether for itself or on behalf of any other person, firm or company) induce or seek to induce any employee of the Company to leave the Company's employment.
- 15.2 The Company may freely assign or sub-contract all or any of its rights and obligations under this Contract. The Customer may not assign, otherwise transfer, charge, allow any third party to benefit from or deal in any other manner with the Contract or any of its rights under it without the Company's prior written consent.
- 15.3 All notices sent under the Contract shall be in writing and in English and delivered by hand or sent by guaranteed mail or fax to the recipient at the address set out in the Estimate or such other address as one party may notify in writing to the other. A notice shall be deemed to have been received if delivered, upon delivery; if posted, on the second working day following posting; and if faxed, when sent to the recipient's fax number PROVIDED THAT a copy of the fax is sent by guaranteed mail or delivered by hand as soon as practicable after transmission.
- 15.4 No waiver by the Company of any breach of the Contract by the Customer is considered as a waiver of any subsequent breach of the same or any other provision.
- 15.5 If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question is not affected.
- 15.6 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.7 The Contract is governed by the laws of England. The Customer shall submit to the non-exclusive jurisdiction of the English courts

## **LINNEYdirect - CONDITIONS OF TRADING**

These conditions govern all supplies to Customers by Linney Direct Limited (the “**Company**”) of mail order, despatch, direct mailing, digital print and related services and any other services which the Company may from time to time agree to provide to the Customer.

### **1. Definitions and interpretation**

1.1. In these Conditions:-

“**Customer**” means the person accepting the Quotation or submitting the Order, as the case may be;

“**Conditions**” means the conditions set out in this document and (unless the context otherwise requires) includes any special conditions appearing on the Quotation or Order, as the case may be;

“**Contract**” means the contract for the supply by the Company to the Customer of the Services;

“**Order**” means the order for the supply of the Services submitted by the Customer verbally or in writing which is accepted by the Company verbally or in writing;

“**Customer Materials**” means any artwork, designs, drawings, written description, photograph, digital artwork, electronic data or other materials provided to the Company by the Customer in connection with which the Services are to be provided;

“**Printed Stock**” means materials printed or produced by the Company in carrying out the Services and delivered in accordance with the Specification;

“**Quotation**” means the written quotation provided by the Company for the supply of the Services;

“**Services**” means any mail order, despatch, direct mail, digital print and related services and any other services which the Company is to provide to the Customer in accordance with these Conditions;

“**Specification**” means the written specification (if any) for the Services and Printed Stock referred to or contained in the Quotation or Order (as the case may be) as the same may be amended from time to time in accordance with these Conditions or with the written agreement of the Company.

1.2. Reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2. The supply**

2.1. The Company shall supply and the Customer shall purchase the Services subject to these Conditions which shall govern the Contract to the exclusion of any other terms. The Contract shall be formed once the Quotation has been accepted by the Customer or the Customer’s Order for Services accepted by the Company, as the case may be. The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from the Contract.

2.2. No variation to these Conditions shall be binding unless approved in writing by a director of the Company.

2.3. Any advice or recommendation given by the Company or its employees or agents to the Customer as to the use or scope of the Services and/or Printed Matter which is not confirmed in writing by the

Company is acted upon at the Customer's own risk, and accordingly the Company is not liable for any advice or recommendation not so confirmed.

2.4. Any error or omission in any sales literature, quotation, price list, invoice, specification or other document or information issued by the Company is subject to correction without any liability to the Company.

2.5. The Company reserves the right to reject any Customer Materials or other materials supplied or specified by the Customer which appear to it to be unsuitable for use in connection with the Services or for the purposes intended. The Company shall not be obliged to check or verify the quality, sufficiency or suitability of any Customer Materials and additional costs incurred by the Company as a result of Customer Materials being found to be unsuitable during production may be charged to the account of the Customer by the Company.

### **3. Quotations, Orders and Specifications**

3.1. The Customer is responsible to the Company for:

3.1.1. ensuring the accuracy and lawfulness of any Order, Customer Materials and other information or materials submitted by it which are either referred to in the Quotation or Order, as appropriate (including any Specification) or which are otherwise submitted in connection with the Services, and

3.1.2. giving the Company sufficient quantities of Customer Materials and other necessary information relating to the Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.2. The Company can accept no liability whatsoever for any discrepancy in Customer Materials or other materials supplied by the Customer and in particular any shortage of Customer Materials or other material delivered to the Company will be the responsibility of the Customer and any resulting additional costs arising as a result of the shortage will be added to the Customer's account.

3.3. The quantity, quality and description of the Services is set out in the Quotation or Order, as the case may be.

3.4. The Customer warrants to the Company that to the best of its knowledge and belief the Company's use, distribution or display of the Customer Materials and Printed Stock will not infringe any intellectual property or other right of any other person, give rise to any tortious liability (including but not limited to negligence), nor violate any applicable law or regulation wherever or howsoever arising.

3.5. If the Company has reasonable grounds for believing that the Customer is in breach of the warranty given in condition 3.4 or becomes aware of any actual or potential violation of any third party rights or applicable law then, without prejudicing its other rights or remedies:

3.5.1. the Company may itself or may require the Customer to make such changes to the Customer Materials and Printed Stock as the Company considers necessary in the circumstances;

3.5.2. the Company may suspend the provision of the Services until it is satisfied that changes necessary to minimise the risk of any liability accruing to it have been taken; and

3.5.3. the Customer shall fully indemnify the Company for all loss, damages, costs and expenses incurred by the Company in connection with any claim arising.

3.6. The Customer will notify the Company immediately if it becomes aware of any circumstance which does or is likely to constitute a breach of the warranty given in condition 3.3.

- 3.7 The Company may make any changes to the Specification which the Company considers necessary for the same to conform with any applicable statutory or EU requirements or, in the case of Customer Materials and Printed Stock, which do not materially alter their quality.
- 3.8 As the case may be, the Quotation once accepted by the Customer or the Customer's order for Services once accepted by the Company may not be cancelled by the Customer save with the Company's written agreement and on terms that the Customer indemnifies the Company in full against all loss (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 cancellation.

#### **4.Price**

4.1.The price of the Services shall be as set out on the Quotation or by the Order, as appropriate. Subject to clause 4.2, all prices quoted are valid for 3 months or until earlier acceptance by the Customer, after which time they may be altered by the Company without notice.

4.2.The Company may increase the price of the Services to reflect any increase in the cost to the Company due to:

4.2.1.any factor beyond the reasonable control of the Company (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of production);

4.2.2.any change in delivery dates or performance, quantities or specifications for the Services or Printed Stock requested by the Customer; or

4.2.3.any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

4.3.The Customer is liable to reimburse to the Company any reasonable expenses properly incurred by it in performing any Services.

4.4.The quoted price is exclusive of any applicable VAT or other sales tax which the Customer is liable to pay to the Company.

#### **5.Payment**

5.1.Save where otherwise stated in the Quotation or the Order (as the case may be), the Company may invoice the Customer for the price of the Services:

5.1.1. on or at any time after their delivery;

5.1.2.when the Printed Stock has been produced and is being held by the Company pending delivery in accordance with the Customer's instructions; or

5.1.3.on a "progress invoicing" basis in accordance with the Company's policies notified to the Customer from time to time.

5.2.Save where otherwise stated in the Quotation or the Order (as the case may be), the Customer will pay the price of the Services in full within 30 days of the Company's invoice. The Company may recover the price notwithstanding that delivery or performance may not have taken place or been completed and title to Printed Stock not passed to the Customer. Time of payment of the price is of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3.All invoices of the Company shall be paid in full without deduction or set off and by such means as the Company shall determine from time to time.

5.4.If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy of the Company, the Company may:-

5.4.1.cancel the Contract or suspend the Services, the production of Printed Stock and any further deliveries to the Customer;

5.4.2.appropriate any payment made by the Customer to such Services and/or Printed Stock (or services or materials supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

5.4.3..charge the Customer interest (before and after any judgment) on the amount unpaid, at the rate of 4% per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## **6.Delivery, risk and title**

6.1.Delivery of Services takes place upon completion of the performance of such services. Delivery of Printed Stock is made by the Customer collecting such stock from the Company's premises or, where some other place of delivery is agreed by the Company, by the Company despatching the Printed Stock to that place whether in hard form, electronically or otherwise.

6.2.Where delivery is to be effected by the Customer collecting the Printed Stock from the Company's premises and the Customer does not collect the same once made available for collection, the Company may charge the Customer for the costs of storage and, if not collected within • weeks of the same being made available, the Company may dispose of the same and recover any costs relating to such disposal from the Customer.

6.3.Dates quoted for the performance of the Services and delivery of Printed Stock are approximate only and the Company is not liable for delay in delivery or performance however caused. Time of delivery or performance shall not be of the essence of the Contract.

6.4.Where the Services are to be delivered in instalments, each delivery constitutes a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments does not entitle the Customer to treat the Contract as a whole as repudiated.

6.5.Risk in Printed Stock passes to the Customer:

6.5.1.where that stock is delivered by the Customer collecting the same from the Company's premises, when the Company notifies the Customer that the stock is available for collection; or

6.5.2.where that stock is delivered other than by the Customer collecting the same from the Company's premises, on delivery or, if the Customer wrongfully fails to take delivery of the stock, when the Company has tendered delivery.

6.6.Notwithstanding delivery, passing of risk in Printed Stock or any other provision of these Conditions, title in Printed Stock does not pass to the Customer until the Company has received in cash or cleared funds full payment of the price of the Services and all other materials and/or services supplied or to be supplied by the Company to the Customer for which payment is then due.

6.7. Until title in Printed Stock passes to the Customer, the Company may require the Customer to deliver up that Printed Stock to the Company and, if it fails to do so, may enter upon any premises of the Customer or third party where that stock is then kept and repossess the same.

6.8. The Customer may not pledge or charge by way of security any Printed Stock owned by the Company, but if the Customer does so all moneys owing by it to the Company become (without prejudice to any other right or remedy of the Company) due and payable.

6.9. The Company can accept no liability whatsoever in respect of loss or damage of any Customer Materials save where this has been caused by the negligence of the Company. The Customer is responsible for making and keeping back-up copies of information provided to the Company or made available to it in connection with the provision of any Services and accordingly the Company shall have no liability for the recovery and/or replacement of Customer Materials or other materials in connection with the provision of the Services.

6.10. The Company may charge the Customer for the costs of storage of Customer Materials or other materials if not collected within • weeks of the conclusion of the Contract and the Company may dispose of the same and recover any costs relating to such disposal from the Customer.

6.11. All film, film settings, negatives, positives, plates, dyes, tape matter (metal or film), artwork (including digital artwork), sketches, samples and original designs of any kind, moulds, stereotypes electrotypes and the like used or created by the Company in connection with the Services and all copyright, design right and other rights of any nature in the same (but excluding any Customer Materials) shall remain the Company's property at all times whether or not the work entailed in the production of such items is charged separately by the Company.

6.12. Any subsequent utilisation of the items in clause 6.11 will be the subject of a separate contract.

## **7. Warranties and liability**

7.1. The Company warrants that the Services and/or Printed Stock shall correspond in all material respects with the Specification (if any) as at delivery. Where there is no Specification then the Company warrants that the Services will be performed with reasonable skill and care. However, the Company is under no liability:

7.1.1. for any defect in the Services or Printed Stock arising from any Customer Materials or any other drawing, design or specification supplied by the Customer;

7.1.2. where the Customer fails to follow the Company's instructions or recommendations in connection with the provision of the Services;

7.1.3. if the price for the Services has not been paid by the due date for payment.

7.2. Subject as provided in these Conditions and except where the Services are supplied to a person dealing as a consumer (defined in Unfair Contract Terms Act 1977), all terms implied by law are excluded to the fullest extent permitted.

7.3. Any claim by the Customer based on a defect in quality of the Services or Printed Stock or failure to correspond with specification (a "Claim") must (whether or not delivery is refused by the Customer) be notified in writing to the Company within 7 days after completion or delivery, as appropriate, of the same. If the Customer does not notify the Company in accordance with this condition then: (a) the Company will have no liability for any such defect or failure, and (b) the Customer is bound to pay the price as if the Services had been performed and any Printed Stock delivered in accordance with the Contract.

7.4. Where a valid Claim is notified to the Company in accordance with these Conditions, the Company may replace the Printed Stock or re-perform the Services free of charge or refund to the Customer the price of the Services (or an appropriate proportion of the price), but shall have no further liability to the Customer.

7.5. Save where death or personal injury is caused by the Company's negligence, the Company is not liable to Customer by way of representation (unless fraudulent), common law duty or under any express or implied term of the Contract, for any indirect, special or consequential loss or damage whether for loss of profit or otherwise (whether caused by the negligence of the Company, its employees or agents or otherwise) arising in connection with the supply of the Services or Printed Stock or their use by the Customer. Save where death or personal injury is caused by the Company's negligence which liability is unlimited, the entire liability of the Company in connection with the Contract shall not exceed the amount paid by the Customer under the Contract, except as expressly provided in these Conditions.

7.6. The Company's obligations under the Contract will be suspended to the extent that it is prevented or hindered from complying by any cause beyond its reasonable control including but not limited to an action of a third party or the Customer, unlawful or unauthorised use of or access to the Company's systems, governmental intervention, labour disputes or the breakdown or interruption of third party systems or machinery. The Company will use reasonable endeavours to remedy such cause and will resume the performance of such obligations as soon as reasonably possible after the removal of the cause.

7.7. Whilst the Company has taken reasonable steps to protect its systems from the introduction of computer viruses, it cannot guarantee that viruses will not enter the Customer's systems through, via or as a result of the Company's systems or the provision of the Services. Accordingly, the Company cannot accept any liability whatsoever (whether for breach of contract, negligence or otherwise) for any such entry where reasonable steps have been taken by or on behalf of the Company to prevent the same.

## **8. Insolvency of the Customer**

8.1. Without prejudice to any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries under the Contract if:-

8.1.1. the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (other than by way of amalgamation or reconstruction);

8.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the Customer's undertaking;

8.1.3. the Customer ceases, or threatens to cease, to carry on business; or

8.1.4. the Company reasonably believes that any of the above events is about to occur.

8.2. Where any of the circumstances in clause 8.1 apply then if any Printed Stock has been delivered or Services supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **9. E-commerce transactions**

9.1. To the extent permitted by English law, the Company and the Customer may conduct transactions using an electronic commerce approach under which they will electronically transmit and receive legally binding purchase and sale obligations including electronic credit entries transmitted by the Customer to the Company's bank account in such manner as may be notified by the Company to the Customer from time to time ("Electronic Communications"). For the purposes of this condition 9, the "originating party" will mean the party transmitting an Electronic Communication and the "receiving party" will mean the party receiving such a communication.

9.2.If the parties choose to conduct transactions pursuant to the provisions of condition 9.1 then:-

9.2.1.the Customer will provide and maintain the equipment, software, services and testing facilities necessary for it to effectively and reliably transmit and receive Electronic Communications.

9.2.2.either party may use a third party service provider for network services provided that the other party is given sixty (60) days prior written notice of any changes to such services.

9.2.3.an Electronic Communication will be deemed received upon arrival at the receiving party's mailbox at the internet address notified to the receiving party by the originating party from time to time or, where the Company is the receiving party, when the Electronic Communication is accessed by it in intelligible form. The receiving party will promptly notify the originating party if an Electronic Communication is received in an unintelligible form providing that the originating party can be identified. In the absence of such notice, the originating party's record of the contents of such Electronic Communication will prevail.

9.2.4.Each party will authenticate documents using a digital signature or User ID (an "authentication"), as specified by the Company, and will maintain security procedures to prevent its unauthorised use. Each party agrees that any authentication contained in any transmitted document will be sufficient to confirm such party originated such Electronic Communication.

9.2.5.Each party shall furnish to the other a list of individuals authorised by it to transmit Electronic Communications and the appropriate authentication. Each party will maintain security provisions to prevent the unauthorised disclosure of such information.

## **10.General**

10.1.The Company may freely assign or sub-contract all or any of its rights and obligations under this Contract.

10.2.Notices required or permitted to be given under these Conditions must be in writing and addressed to the relevant party at its registered office or principal place of business.

10.3.No waiver by Company of any breach of the Contract by the Customer is considered as a waiver of any subsequent breach of the same or any other provision.

10.4.If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question is not affected.

10.5.The Contract is governed by the laws of England. The Customer will submit to the non-exclusive jurisdiction of the English courts.