

## CONDITIONS OF BUSINESS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In these conditions ("The Conditions of Business"), unless context otherwise requires:
- "Contract" shall mean the contract between the Service Provider and the Customer for the supply of Work, consisting of these conditions of business, any Special Terms and terms included in the Estimate.
- "Customer" shall mean the person, firm or company to whom the Work is to be supplied under the terms of the Contract.
- "Delivery" shall mean the delivery or collection of Goods or completion of Services (as applicable) and Deliver and Delivered shall be construed accordingly.
- "Estimate" means the price or tender for the Work based on the requested specification issued in Writing by the Service Provider to the Customer.
- "Goods" means goods, articles, materials data and accompanying documentation which the Service Provider is to supply.
- "Hire Equipment" means equipment to be hired to the Customer by the Service Provider.
- "Installation" means the installation of the Goods and/or the Hire Equipment at the Premises.
- "Premises" means the premises to which the Goods are to be delivered and/or at which the Services are to be performed.
- "Service Provider" shall mean [ *the relevant St Ives company providing the goods/services* (Company Number )], registered in England & Wales whose registered office is at One Tudor Street, London EC4Y 0AH trading as part of the "St Ives Group".
- "Services" means the supply, hire and/or installation of the Goods and/or Hire Equipment and associated services to the Customer, and shall include, but not be limited to, the production, printing and supply of Goods (together with all ancillary services related thereto); data handling; direct mail; personalisation; distribution; packaging; print management; provision of point of sale materials; exhibitions display and outdoor graphics assembly; Installation; visual and marketing consultancy; warehousing, logistics and fulfilment described in the Estimate.
- "Special Terms" shall mean the Service Provider's additional conditions of business which govern its provision of the following type of Work: data management; direct mail; personalisation; distribution; packaging; print management; provision of point of sale materials; exhibitions display and outdoor graphics assembly and installation; visual and marketing consultancy; warehousing, logistics and fulfilment ("Added Value Services").
- "Work" shall mean the Goods supplied and/or Services undertaken by the Service Provider.
- "Writing" includes fax, email, letter and comparable means of communication.
- 1.2 Any reference to any statute or statutory provision includes a reference to the statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.3 The headings in these Conditions of Business are for convenience only and shall not affect their interpretation. A reference to a "person" means to any individual, firm body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture. Words in the singular shall include the plural and vice versa.

### 2. BASIS OF THE CONTRACT

- 2.1 The Service Provider shall supply the Work to the Customer for the price set out in the Estimate subject to the terms of the Contract and to the exclusion of all other terms and conditions which the Customer may seek to impose.
- 2.2 No Contract shall be formed until either the Service Provider's Estimate has been accepted by the Customer and the Service Provider has acknowledged/confirmed the Customer's acceptance in Writing, or where the Customer submits a written order that order has been accepted by the Service Provider in Writing.
- 2.3 No variation to the terms of the Contract shall be binding unless agreed in Writing by an authorised representative of the Service Provider.
- 2.4 No representations, warranties or undertakings (verbal or otherwise) made concerning the Work shall be binding unless confirmed in Writing by an authorised representative of the Service Provider.

### 3. SPECIFICATIONS

- 3.1 Where proofs are submitted to the Customer for approval, the Service Provider shall incur no liability for errors in those proofs which the Customer fails to identify.
- 3.2 All samples, illustrations or descriptive materials including specifications, drawings and particulars of weights/dimensions and performance issued by the Service Provider shall be treated as approximate only and the Service Provider gives no warranty or representation that the Work will conform to such unless agreed otherwise in Writing.
- 3.3 If the Work is to be produced in accordance with the Customer's specification, the Customer warrants that it owns or is licensed, or authorised to use the intellectual property rights in that specification and indemnifies the Service Provider against all loss, damages, costs and expenses awarded against or incurred by the Service Provider in connection with; (i) any claim that the specification or the use of it infringes a third party's patent, copyright, design, trade mark or other industrial or intellectual property rights and/or (ii) any impracticality, inefficiency or lack of safety or other defect in the Work due (whether in whole or in part) to faults or omissions in information, drawings, designs, instructions, or specifications of the Customer.
- 3.4 The Service Provider reserves the right at any time to make changes to its or the Customer's specification of the Work which are required to conform with any applicable statutory or EC requirements and to the Service Provider's specification where that change does not materially affect the quality or performance of the Work.
- 3.5 No Contract for work may be cancelled by the Customer except with the Service Provider's agreement in Writing.

4. **PRICE FOR THE WORK**

- 4.1 Unless otherwise agreed in Writing the price of the Work (“the Price”) shall be the price stated in the Estimate or, where no price has been stated, the Service Provider’s current listed price for such. All Prices in the Service Provider’s Estimate(s) are valid for 30 days unless withdrawn by the Service Provider earlier.
- 4.2 Prices are based on the cost of production at the date of the Estimate and the Service Provider reserves the right at any time before Delivery, to increase the Price to reflect; (i) any increase in those costs (such as, foreign exchange fluctuations, significant increases in labour, or materials costs), or (ii) any change in Delivery dates, quantities or specifications for the Work requested by the Customer, or (iii) any delay caused by the Customer’s instructions or failure to give adequate instructions or information.
- 4.3 Unless otherwise stated by the Service Provider in Writing, all Prices are given on an ex works basis, and where the Service Provider agrees to deliver the Goods, the Customer shall be liable to pay the Service Provider’s charges for transport, packaging and insurance.
- 4.4 Prices are exclusive of value added tax, which the Customer shall be additionally liable to pay at the applicable rate.
- 4.5 Returnable pallets and containers will be charged for in addition to the Price, but if returned to the Service Provider undamaged before the due payment date a full credit for those charges will be given.

5. **TERMS OF PAYMENT**

- 5.1 The Service Provider reserves the right to require payment of the Price (or part) in advance, which may be applied by the Service Provider, at its discretion, against any invoice rendered by the Service Provider under the Contract.
- 5.2 Unless agreed otherwise in Writing, the Customer shall pay the Price (or the balance of the Price) due without any set off deduction, counterclaim, abatement or otherwise within 30 days from date of invoice. The Service Provider reserves the right to submit interim invoices at the Service Provider’s discretion.
- 5.3 The time of payment shall be of the essence of the Contract, and payment shall not be deemed received until the Service Provider is in receipt of cleared funds. If the Customer fails to make payment in full by the relevant due date, the Service Provider shall, without prejudice to any other right or remedy available to it, be entitled to:
- 5.3.1 cancel the Contract or suspend any further deliveries of the Goods or performance of the Services;
- 5.3.2 immediate payment of all outstanding invoices in respect of the Goods and/or Services under any Contract notwithstanding the fact that the date for payment may not yet be due;
- 5.3.3 charge interest on the amount unpaid, at the rate of 4% above the base rate of HSBC Bank plc from time to time in force, from the date the monies fell due until payment is made in full; and
- 5.3.4 charge the Customer for any costs incurred in recovering any unpaid amount(s) (including legal costs, disbursements and bank charges).
- 5.4 The Service Provider reserves the right to set off any monies owed by it to the Customer against those owed to it by the Customer.

6. **DELIVERY**

- 6.1 Goods shall be deemed Delivered when the Customer collects the Goods from the Service Provider’s premises after being notified that the Goods are ready for collection or, if being delivered, when the Service Provider delivers the Goods to the Premises and the Services shall be deemed completed on notification to The Customer that the Services have been completed.
- 6.2 Any dates quoted for Delivery of the Work are approximate only and the Service Provider shall not be liable for any delays in Delivery howsoever caused. The Work may be Delivered in advance of the quoted Delivery date provided the Customer is given reasonable notice.
- 6.3 Where the Work is to be Delivered in instalments, each Delivery shall constitute a separate Contract and failure by the Service Provider to Deliver any one or more of the instalments in accordance with the Conditions of Business or any claim made by the Customer in respect of any one or more instalment shall not entitle the Customer to cancel any remaining instalment(s).
- 6.4 If the Service Provider fails to Deliver the Work, other than due to a Force Majeure Event (as defined in clause 15 hereof) or the Customer’s fault, its liability to the Customer shall be limited to the excess (any amount paid over and above the Price that the Customer would have paid for the Work), if any, of the cost to the Customer in the cheapest available market of obtaining similar goods and/or services to replace those not Delivered. In no circumstances shall the Service Provider be responsible for any other loss (including loss of profit) whether direct, indirect or consequential costs, damages, charges or expenses arising out of such late or non-Delivery.
- 6.5 If the Customer fails to take Delivery of the Work or fails to give the Service Provider adequate delivery instructions (otherwise than due to a cause beyond the Customer’s reasonable control or the Service Provider’s fault) then, without prejudice to any other right or remedy available to the Service Provider, the Service Provider may: (i) elect that the Work be deemed Delivered; or (ii) store the Goods at the Customer’s expense until actual Delivery; or (iii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess above, or charge the Customer for any shortfall below, the Price under the Contract.
- 6.6 Any defects in the Work must be notified in Writing (affording the Service Provider a reasonable opportunity to inspect the defects, failing which the notice shall be deemed to be invalid) to the Service Provider within 7 days of Delivery of the Work. Otherwise the Work will be deemed to have been accepted by the Customer free of defects or faults. In any event the Customer shall be deemed to have accepted the Work if the Customer uses the Work after Delivery.
- 6.7 Every endeavour will be made to deliver the correct quantity of Goods ordered but it shall be a term of the Contract that margins of 5 per cent for Goods in one colour only and 10 per cent for other Goods are allowed for overs or shortages, the same to be charged or deducted.

7. **RISK AND PROPERTY**

- 7.1 Risk of damage or loss of the Work shall pass to the Customer at the time of Delivery or, if the Customer wrongfully fails to take Delivery, at the time the Customer was notified the Work was ready for, or was tendered for, Delivery.

- 7.2 Property in the Goods shall not pass to the Customer until the Service Provider has received in cleared funds full payment of the Price for the Goods and/or Services and any other monies for work carried out for the Customer for which payment is then due to the Service Provider.
- 7.3 Until the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Service Provider's fiduciary agent and bailee, and shall keep the Goods securely stored and separate from those of the Customer and third parties and identified as the Service Provider's property, and the Service Provider shall (provided the Goods are still in existence and have not been resold) be entitled at any time to require the Goods to be returned or be permitted to enter the Customer's or any third party's premises to repossess the Goods. Notwithstanding the foregoing provisions, the Customer is permitted by the Service Provider to resell or use the Goods in the ordinary course of its business prior to title passing to the Customer, PROVIDED that such sale or use could not be reasonably avoided by the Customer and that the proceeds of such resale or the benefit to the Customer of such use of the Goods is accounted for by the Customer to the Service Provider. In such circumstances the Service Provider shall apply the proceeds so received against any sums due to it by the Customer in respect of the Goods.

8. **WARRANTIES AND LIABILITY**

- 8.1 The Service Provider warrants that (i) the Goods manufactured by the Service Provider will be free from defects in material and workmanship for a period of 12 months from Delivery and (ii) the Services will be provided using reasonable skill and care.
- 8.2 The above warranty is given subject to the Service Provider having no liability (i) for any defect in the Goods and/or Services arising from any information, drawing, design, instruction or specification supplied by the Customer, or (ii) for any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Service Provider's instructions (whether oral or in Writing), improper installation (other than by the Service Provider) misuse or alteration or repair of the Goods and/or Services without the Service Provider's approval, and (iii) if the total Price for the Goods and/or Services has not been paid by the due date for payment or if the Customer is otherwise in breach of the Contract or any other contract with the Service Provider (for the avoidance of doubt, the foregoing warranty does not apply to Hire Equipment and/or Installation).
- 8.3 Subject as expressly provided in the Contract, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 The Service Provider shall not be liable to the Customer under the Contract or otherwise, for any indirect, special or consequential loss or damage (including, but not limited to, loss of business, reputation, good will, or for loss of profit, anticipation of savings or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Service Provider, its employees or agents or otherwise) which arise out of or in connection with the supply, use or resale of the Goods by the Customer, or the supply of the Services, and the entire liability of the Service Provider under or in connection with any Contract shall not exceed 100% of the Price payable under that Contract, unless expressly provided otherwise in the relevant Contract.
- 8.5 The Service Provider shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay or failure to perform any of the Service Provider's obligations in relation to the Contract, if the delay or failure is due to a Force Majeure Event (as defined in clause 15 hereof).
- 8.6 Notwithstanding the other provisions of clause 8, the Service Provider may, if a defect or fault in the Work has been accepted by the Service Provider, at its discretion elect to repair and/or replace the Work and if so, the repair, replacement of the Work shall be the full extent of the Service Provider's liability to the Customer under the Contract.
- 8.7 Nothing in this clause 8 shall restrict the Service Provider's liability for death or personal injury caused by the Service Provider's negligence or its liability for fraudulent misrepresentation.

9. **INDEMNITY**

- 9.1 The Service Provider shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with any claim that the Work infringes, or that their use or resale infringes, the intellectual property rights of any other person, save for where the infringement arises directly or indirectly as a result of, or from the use of, the Customer's Materials (as defined in clause 10 hereof), information, drawing(s), design, instruction(s), material(s), or specification, (for which the Customer shall be liable and indemnify the Service Provider against any such claims), and provided that:
- 9.1.1 the Service Provider is given full control and the Customer shall give the Service Provider all reasonable assistance with any proceedings or negotiations;
- 9.1.2 the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Service Provider (which shall not be unreasonably withheld); and
- 9.1.3 the Customer shall take such steps as the Service Provider may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Service Provider is liable to indemnify the Customer under clause 9.

10. **MATERIALS SUPPLIED BY THE CUSTOMER**

- 10.1 The Customer shall be responsible for ensuring that any computer files, artwork, sketches, specifications, instructions or descriptions or information supplied by the Customer or on its behalf in connection with the manufacture or production of the Work are accurate, unambiguous and clearly legible and meet the Customer's requirements; and that paper, plates, signatures or substrates, inserts, "outserts" or other materials supplied or specified by the Customer or the resulting product of any direct input provided by or on behalf of the Customer ("Customer's Materials") are suitable. The Service Provider may reject any Customer's Materials which are found to be unsuitable at any stage during or after production and may make an additional charge.
- 10.2 Where the Customer's Materials are supplied or specified by or on behalf of the Customer responsibility for defective Work will not be accepted by the Service Provider unless this is due to failure to use reasonable skill and care.
- 10.3 Quantities of the Customer's Materials supplied by the Customer shall be adequate to cover normal trialling, spoilage and wastage and shall be supplied within a reasonable time prior to manufacture or production of

the Work.

10.4 The Customer's Materials are not counted, weighed or checked when received unless agreed otherwise in Writing.

11. **STORAGE**

The Service Provider shall not be obliged to provide storage accommodation for the Goods, Customer's Materials, printed sheets, bound books or other items except by express agreement in Writing.

12. **TERMINATION OF CONTRACT**

12.1 The Service Provider may terminate if one of the following occurs or it reasonably apprehends is about to occur and notifies the Customer accordingly:

12.1.1 the Customer makes any voluntary arrangement with its creditors, or becomes bankrupt, or becomes subject to an administration order, or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

12.1.2 an encumbrancer takes possession of, or a receiver is appointed to manage any of the property or assets of the Customer, or the Customer ceases, or threatens to cease, to carry on business; or

12.1.3 the Customer is in breach of the provisions of the Contract and fails to remedy the same (if capable of remedy) within 7 days of the Service Provider notifying the Customer of such breach.

12.2 If this clause 12 applies then, without prejudice to any other right or remedy available to the Service Provider, the Service Provider shall be entitled to cancel the Contract and/or suspend any further deliveries without any liability to the Customer, and if the Price has not been paid, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12.3 A Contract for the printing of periodical publications may be terminated in Writing at any time by either party serving on the other a minimum period of notice as follows: weekly, fortnightly and monthly publications – 13 weeks'; and two-monthly and quarterly publications – 26 weeks'.

13. **LIEN**

Without prejudice to other remedies whether under the Contract or otherwise, the Service Provider shall, in respect of all debts due from the Customer whether under the Contract or otherwise and whether or not due for payment have a lien on all goods and property in its possession belonging to the Customer (whether worked on or not) and whether or not in the possession of the Service Provider under the Contract and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property as it thinks fit and to apply any proceeds towards such debts.

14. **ILLEGAL MATTER**

14.1 The Service Provider shall not be required, and may cancel or reject any order received from or Contract made with the Customer, to print any matter which in its sole opinion is or may be of an illegal or defamatory nature or an infringement of any third party rights, including but not limited to copyright, patent, registered designs, design rights, trade or service marks the use of data contained in computer files and any other industrial or intellectual property.

14.2 The Customer shall indemnify and hold harmless the Service Provider from and against all actions, proceedings, loss, damages, costs (including labour and material costs), claims, demands and expenses (including all reasonable legal expenses) whatsoever suffered or incurred by the Service Provider by reason of the Customer's Material or the Work containing any matter of a defamatory nature or being an infringement of any third party's Intellectual Property Rights or in connection with any cancellation or rejection of an order by the Service Provider pursuant to clause 14.1 hereof.

14.3 The Service Provider shall be entitled to refuse to produce Work which contravenes the Data Protection Act 1998 and any associated legislation or which in its opinion is contrary to that Act or associated legislation or contrary to the British Code of Advertising Practice, the British Code of Sales Promotion Practice, the British Code of Advertising Rules on Direct Marketing or the ICSTIC Code of Practice

15. **FORCE MAJEURE**

The Service Provider shall not be in breach of the Contract if there is any total or partial failure of performance by it of its duties and obligations under the Contract occasioned by an act of God, fire, flood, drought, power failure, reduction in power supplied, mechanical failure, lack or shortage of materials (not being due to the wilful default of the Service Provider), war, legislation, civil commotion, insurrection, embargo, strike, lockout, industrial dispute or any other event beyond the Service Provider's control. If the Service Provider is unable to perform its obligations under the Contract as a direct result of the effect of one of such reasons, the Service Provider shall give notice in Writing to the Customer of such inability stating the reason in question. The operation of the Contract shall be suspended during the period in which the reason continues. Forthwith upon the reason ceasing to exist, the Service Provider shall give advice in Writing to the Customer of this fact. If the reason continues for a period of more than 90 days the Customer may by notice in Writing to the Service Provider terminate the Contract and pay for Work done and materials used, but subject thereto shall accept delivery when available.

16. **CONSTRUCTION OF CONTRACT**

16.1 The Service Provider may subcontract the Contract or any part of it to any person, firm or company provided that any act or omission of any such sub-contractor shall be deemed to be the act or omission of the Service Provider and may also assign or novate the Contract to any subsidiary (as defined in Section 1162 of the Companies Act 2006) of St Ives plc. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Service Provider.

16.2 Any notice required or permitted to be given by either party to the other under these Conditions of Business shall be in Writing addressed to that other party at its registered office or such other address as may have been notified pursuant to this provision.

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

16.4 Each right or remedy of the Service Provider under the Contract is without prejudice to any other right or remedy of the Service Provider whether under the Contract or not.

16.5 Failure or delay by the Service Provider in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights and any waiver by the Service Provider of any breach or default by the Customer will not be deemed a waiver of any subsequent breach or default by the Customer

and will in no way affect the other terms of the Contract.

- 16.6 The Contract and any documents referred to in it constitute the entire agreement between the parties.
- 16.7 A person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 16.8 Where the Customer is a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) the statutory rights of that Customer shall not be affected by the provisions in the Conditions of Business or any applicable Special Terms.

**17. LAW & POLICIES**

- 17.1 The terms of the Contract shall be governed and construed in accordance with the Laws of England and the Customer hereby submits to the non-exclusive jurisdiction of the English Courts.
- 17.2 As a supplier of goods and services the Service Provider takes its responsibilities seriously and to this end has in place "Ethical Trading" and "**Anti-Corruption and Bribery**" policies. Copies of both can be accessed on the Service Provider's website at [www.st-ives.co.uk](http://www.st-ives.co.uk)

**SPECIAL TERMS**

The following Special Terms apply to Added Value Services, by type. In the case of conflict between the Conditions of Business and these Special Terms, the latter shall prevail.

**DIRECT MAIL, PERSONALISATION AND DISTRIBUTION SERVICES**

**18. DATABASE**

- 18.1 If Customer Material(s) supplied include(s) a Database (a collection of names and addresses to be stored on the Service Provider's computer system) this shall be supplied by e-mail, ISDN or on a computer diskette, floppy disk, hard disk, magnetic tape, or whatever other format is compatible with the Service Provider's computer system or, if agreed in Writing, a hard copy.
- 18.2 The Customer shall be responsible for ensuring that the Database is i) capable of being read and processed by the Service Provider; ii) supplied with a file layout in respect of each format of file supplied; iii) provided within sufficient time to allow all processing to take place and the results to be evaluated before processing and manufacturing proceed; and d) computer virus free.
- 18.3 The Service Provider may reject any Database that is not so supplied or may at its own discretion and at the Customer's expense, reformat the Database to make it compatible.
- 18.4 The Service Provider will load the Database on its computer system and will retain the Database for three months following completion of the Work or until advised by the Customer to return or destroy it, whichever occurs earlier. The Customer is solely responsible for keeping a back-up copy of any Database supplied to the Service Provider and the Service Provider will not be liable for any loss sustained as a result of the Database supplied to it being lost or destroyed in whole or part.
- 18.5 The Service Provider shall treat the Database as confidential, will protect it with at least as substantial security measures and an equivalent degree of care as the Service Provider would apply to its own confidential information, shall adhere to the requirements of the Data Protection Act 1998 (the Act), except insofar as its breach of the Act is due to the act or omission of the Customer, and shall not use the Database for any purpose other than that approved by the Customer in Writing. The Service Provider shall only disclose the content of the Database on a "need to know" basis to those engaged in producing the Work and, to any relevant legal or regulatory body which is lawfully entitled to require any such disclosure, PROVIDED THAT, to the extent that it is lawful and practicable so to do, the Service Provider gives the Customer prior notice of such disclosure.

**19. DELIVERY**

- 19.1 In relation to any direct mail items (including, but not limited to, inserts or other circular letters, leaflets and other documents which the Service Provider is to produce and deliver, or simply deliver on behalf of the Customer) ("Direct Mail Packs"), save where the context otherwise requires, delivery shall take place when the Direct Mail Pack is collected from the Service Provider's premises by the Royal Mail or another carrier.
- 19.2 Delivery shall be made in boxes or bags of such size as the Service Provider may consider appropriate. Delivery of more or less than the quantity or weight of the Direct Mail Packs ordered, subject to clause 6.7, shall not entitle the Customer to reject the Direct Mail Packs delivered. The Service Provider's notification of the quantity or weight of the Direct Mail Packs delivered shall be accepted as conclusive proof of quantity or weight of Direct Mail Packs so delivered.

**20. POSTAGE**

Where it is agreed that Royal Mail's postage or other carriers' charges for delivery of Direct Mail Packs will be charged to the Service Provider's account with the Post Office or other carrier, the Customer shall pay, in cleared funds, to the Service Provider the gross amount of such postage or carriage costs (or such part of that amount as agreed by the Service Provider) prior to the Direct Mail Packs being collected by the Post Office or other carrier. The Service Provider shall be entitled to withhold delivery of the Direct Mail Packs until the Customer shall have paid such sum. Should postage or carriers' charges increase or the final weight of the Direct Mail Packs be greater than that estimated and paid by the Customer prior to collection, the Service Provider shall be entitled to recover from the Customer any excess.

**21. LIABILITY**

In respect of Direct Mail Packs the Service Provider shall not be liable for any loss, damage or expense incurred or sustained by the Customer as a result for whatever reason of any person not receiving, incorrectly receiving, or receiving more than one Direct Mail Pack.

## **PACKAGING AND DESIGN SERVICES**

### **22. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS IN DESIGNS**

- 22.1 Where the Service Provider shall have designed any items ("the Design") for the Customer including, but not limited to, cardboard packaging for CDs and DVDs, cardboard engineered samples, freestanding display units, exhibition stands and hoardings, and corporate interior design, the Service Provider shall retain all rights in the Design unless agreed in Writing by a duly authorised representative of the Service Provider to the contrary. The Service Provider grants a non-exclusive licence to the Customer on the terms set out in this clause 22 to use such Design in connection with the Contract only, such licence to take effect conditional on receipt by the Service Provider of payment in full for the Work and all other sums owed to the Service Provider. If any such payment is overdue at any time the Service Provider may, by notice in Writing, withdraw its licence to use the Design.
- 22.2 The Customer shall not have the right, without the prior consent in Writing of the Service Provider (i) to reproduce or authorise others to reproduce such Design, (ii) to make, let or permit the making of copies of any Design, (iii) to sell, lease or hire the Design, nor (v) to modify the Design, except, in each case, to the extent (if any) provided in the specification or as agreed in Writing by the Service Provider.
- 22.3 The Service Provider reserves the right to use any knowledge and right acquired in developing the Design to market and license other products derived therefrom PROVIDED that such rights shall not include the right to reproduce the items or any Customer's Materials.

## **POINT OF SALE MATERIALS, EXHIBITIONS DISPLAY AND OUTDOOR GRAPHICS INSTALLATION**

### **23. INSTALLATION**

- 23.1 Where Installation is required, the Service Provider shall install the Goods and/or Hire Equipment in accordance with this clause 23 and the Contract generally.
- 23.2 the Service Provider shall not be responsible for any delay in Installation directly or indirectly arising out of the acts or omissions of the Customer (including any employee, agent or contractor of the Customer) or any third party.
- 23.3 The Customer shall:
- 23.3.1 obtain all necessary licences, consents, or approvals etc required from any governmental, local authority or other relevant third party and to continue to meet those requirements and maintain their approval in respect of the Installation and, if such approval or consent is amended or ends, notify the Service Provider immediately;
- 23.3.2 provide any information the Service Provider may reasonably require in connection with the Customer, the Premises, the Installation to enable the Service Provider to perform the Installation and inform the Service Provider if such information changes;
- 23.3.3 give the Service Provider access to the Premises so as it may perform the Installation and provide such assistance as may be reasonably requested promptly and without cost to the Service Provider. The Customer shall move any materials, and other objects obstructing or preventing Installation;
- 23.3.4 ensure the Premises and any equipment provided are safe and without risk for the Service Provider's employees and agents and alert the Service Provider to the location of any concealed pipes and wires and any other known risks and hazardous materials on the Premises which may affect the Installation;
- 23.3.5 operate the Goods and/or Hire Equipment according to the requirements of the specification, operating instructions, user's handbooks (if any) issued from time to time;
- 23.3.6 be responsible for and compensate the Service Provider for all liabilities, claims, losses or expenses due to the Goods and/or Hire Equipment not being used in accordance with the specification, operating instructions, or user handbooks, or as a result of the Goods and/or Hire Equipment being connected to equipment /devices not supplied by the Service Provider;
- 23.3.7 inform the Service Provider at once of any defect or fault in the Goods and/or Hire Equipment; or if they have been tampered with, damaged or stolen or if the Goods and/or Hire Equipment are or have been subjected to any unusual operating or environmental conditions; and
- 23.3.8 ensure that the Service Provider's staff and contractors have adequate welfare facilities (toilet and washing facilities).

### **24. HIRE**

Where the Customer as part of the Contract hires Hire Equipment, unless varied and/or extended by the Service Provider in Writing:

- 24.1 the period of hire shall commence on the earlier of the date of the Contract, or the date on which the Hire Equipment is collected by or delivered to the Customer, and shall end on the earlier of (i) the day on which it is returned/redelivered or recollected by the Service Provider and (ii) on the expiry of the agreed period of hire;
- 24.2 in respect of Delivery of Hire Equipment, the provisions of clause 6 shall apply mutatis mutandis;
- 24.3 the Customer shall report any defects or malfunction in the Hire Equipment within 48 hours of Delivery and shall, if so requested by the Service Provider, return the Hire Equipment to the Service Provider for inspection. If the Service Provider agrees that the Hire Equipment is defective or faulty, it shall use its reasonable endeavours to provide a suitable replacement as it shall in its absolute discretion consider appropriate;
- 24.4 the Hire Equipment shall be under the Customer's control at all times from Delivery until its return or collection and the Customer shall ensure that the Hire Equipment is used safely and not used for any purpose for which it is not designed or suitable;
- 24.5 subject to clause 24.3 and except for any liability for death or personal injury arising out of the negligence of the Service Provider, its servants or agents, the Service Provider accepts no responsibility for any loss, damage, costs, claims or expenses suffered or incurred by the Customer or by any third person (including the Customer's servants or agents) relating to the use or hire of the Hire Equipment and the Customer shall be responsible for and shall indemnify the Service Provider against all such loss or damage caused to or by the Hire Equipment howsoever arising;

- 24.6 the Customer shall keep the Hire Equipment insured against loss, damage and third party risks and shall produce evidence of such insurance on request;
- 24.7 the Customer shall not move the Hire Equipment from the Premises without the Service Provider's consent in Writing (which may be withheld or made subject to such conditions as the Service Provider may determine). The Customer shall keep the Hire Equipment in its sole possession and shall not lend, sublet or otherwise part with possession of it in any way. The Customer acknowledges that the Hire Equipment remains the property of the Service Provider at all times and must not in any circumstances be sold or used as security and the Customer shall not permit any lien to be created on the Hire Equipment;
- 24.8 the Service Provider will maintain the Hire Equipment at its own expense and the Customer shall, when required by the Service Provider, grant access to the Hire Equipment for the purpose of inspecting maintaining or repairing it;
- 24.9 the Customer must not repair or attempt to repair the Hire Equipment in the event of damage but must notify the Service Provider immediately, and if the damage has been caused by the Customer's fault, carelessness or misuse, the repair will be at the expense of the Customer;
- 24.10 the Service Provider may substitute other Hire Equipment of a similar type or condition in lieu of repairing the Hire Equipment, without relieving the Customer from any responsibility for the cost of repair under these Conditions and without extending the period of hire;
- 24.11 nothing in this clause 24 shall affect or diminish the liability of the Customer for any breach of this Agreement or render the Service Provider liable to the Customer for any resultant or consequential loss, damage or inconvenience; and
- 24.12 if the Hire Equipment is returned damaged or not returned the Customer will be liable for the cost of repair or replacement. If the Hire Equipment is irreplaceable the Service Provider will invoice the Customer for the full retail value of the Hire Equipment.