

Conditions of Contract

30.11.98

1. DEFINITIONS:

- In these Conditions the following expressions shall have the following meanings:-
- (a) **"Seller"** shall mean **HOLDMEDE LTD t/a PELICAN PRESS** and also where the context so permits any agent of the said Firm.
 - (b) **"Services"** shall include the supply of printing services of all kinds described in or necessitated by a Contract and all work undertaken by the Seller in connection therewith and also the provision of ancillary goods.
 - (c) **"Goods"** shall include the ancillary goods above referred to and all materials and products procured or provided by the Seller in connection with or incidental to a Contract including material upon which Services have been performed, film and computer discs.
 - (d) **"Supply"** shall mean the sale of the Services and Goods notwithstanding any credit offered or any retention of title to the Goods.
 - (e) **"Buyer"** shall mean the person firm or company with whom any Contract to supply Services or Goods is made by the Seller.
 - (f) **"Despatch"** shall mean that the earlier of the time when the Goods leave the Seller's premises or the time at which the Seller informs the Buyer that the services have been performed or the Goods are ready for collection by the Buyer.
 - (g) **"Contract"** shall mean each contract entered into by the Buyer with the Seller in respect of Services or Goods to be supplied.

2. GENERAL:

- (a) These conditions shall be deemed to be incorporated in all Contracts of the Seller to the supply of Services or Goods and all work undertaken or Goods supplied by the Seller shall be deemed to be carried out pursuant to a Contract incorporating these conditions.
- (b) In the case of any inconsistency with any letter or quotation incorporating or referring to these conditions or any order letter or form of Contract sent by the Buyer to the Seller or any other communication between the Buyer and the Seller whatever may be the respective dates the provisions of these conditions shall prevail unless expressly varied in writing and signed on behalf of the Seller.
- (c) Any concession made or latitude allowed by the Seller to the Buyer shall not affect the strict rights of the Seller under the Contract.
- (d) Each provision of these conditions is to be construed as a separate provision applying and surviving even if for any reason one or other of the said provisions is held invalid or unenforceable or unreasonable in any circumstances.
- (e) The person firm or company from whom the Seller receives instructions ("the Buyer") shall be liable to the Seller as a principal for all costs charges and expenses that shall be due to the Seller in respect of work carried out or goods supplied by the Seller subject to these conditions whether or not such Buyer purports to contract as an agent. A Buyer may not assign the benefit or burden of any Contract with the Seller.
- (f) Only these terms and conditions shall apply to transactions between the Seller and the Buyer. Any conditions from the Buyer's documents are sent by the Buyer and received by the Seller on the understanding that they appear on the Buyer's documents because they are printed thereon but have no legal affect whatsoever and the Buyer waives any right which the Buyer might have to rely on such conditions.

3. ORDERS:

- (a) Notwithstanding that the Seller may have given a detailed quotation no order shall be binding on the Seller unless and until it has been acknowledged and accepted in writing by the Seller.
- (b) Every endeavour will be made to deliver the correct quantity ordered, but it is hereby agreed that estimates are conditional upon margins of 5 per cent for work in one colour only and 10 per cent for other work being allowed for covers or shortage (4 per cent and 8 per cent respectively for quantities exceeding 50,000) the same to be charged or deducted.

4. PRICES AND PAYMENTS:

- (a) The Seller reserves the right to vary any price in addition of the quoted price for the Services in accordance with the market conditions at or prior to the date of Despatch and the Buyer shall pay such additions in addition to the quoted price. Any price set out in any quotation or order acknowledgement shall be considered as solely for information and shall not constitute a representation or contractual obligation on the part of the Seller that it will deliver the Service at the price unless subsequently confirmed in writing and signed by the Seller.
 - (b) All prices are for sale ex-works of the Seller and are exclusive of carriage, insurance or freight charges, unless the contrary is confirmed in writing signed by the Seller.
 - (c) All prices are exclusive of VAT and if chargeable this will be charged at the appropriate rate ruling at the date of Despatch.
 - (d) In any event the Seller shall be entitled upon notice to the Buyer (without entitling the Buyer to cancel the order or part order) to adjust the stated price to take account of:-
 - (i) any costs to the Seller resulting from delay by the Buyer in giving to the Seller insufficient information to enable it to supply all or any of the Services and without prejudice to the generality of the foregoing including where copy supplied by the Buyer is not legible or additional work is necessitated resulting from alterations in the Buyer's instructions (including where matters are not specified or left to the Seller's discretion and then found unacceptable to the Buyer) or where materials supplied by the Buyer for use by the Seller in the performance of a Contract are found to be unsuitable;
 - (ii) where any text, illustrations or other matter is supplied to the Seller in a digitised form, or on a disc or through a modem and the data so received is not suitable for outputting on the Seller's equipment the Seller will take every care to secure the best results but shall not be responsible for:-
 - (a) any imperfect work caused by the unsuitability of such data; and
 - (b) any delay in delivery occasioned by the additional work;
 - (iii) where Despatch is expedited at the request of the Buyer resulting in additional costs thereby incurred;
 - (iv) storage by the Seller of the Buyer's property received before or not collected after the Contract;
 - (v) the failure by the Buyer to take or accept delivery;
 - (vi) any uncompleted portion of the Contract or Order;
 - (vii) matters referred to in clause 3(b) hereof.
 - (e) The Contract Price shall be due and required to be paid by the Buyer without any deduction or set off within 30 days from the date of Despatch or such earlier date if demanded by the Seller.
 - (f) Any amount not paid by the Buyer on due date shall bear interest at the rate of 2% (Two per cent) per month from the date it falls due, until it is paid.
 - (g) In any of the following events:-
 - (i) the Buyer fails to make payment in accordance with condition 4(e) above; or
 - (ii) the Buyer fails to take delivery of the Goods or any part of them on the date of Despatch; or
 - (iii) the Buyer fails to provide any instructions or materials or fails to provide any other prerequisite required by the Seller to enable the Services to be performed on the due date or within a reasonable time of the Seller's request; the Seller shall have the right at its sole discretion and without prejudice to its other rights or remedies to:-
 - (a) suspend any outstanding Contracts with the Buyer; or
 - (b) cancel any outstanding Contracts with the Buyer;
- summarily by notice in writing without compensation to the Buyer but with the right to be paid in respect of all work done for Services performed or Goods supplied to the Buyer and to be reimbursed the amount of all monies paid out on account of the Buyer up to the date of such suspension or cancellation.
- (h) In the event of suspension of the Contract envisaged by clauses 4(g) or 5(f) hereof or in the event of cancellation the Seller may on giving written notice to the Buyer store or arrange for the storage of the Goods and on the service of the notice:-
 - (a) risk in the Goods shall pass to the Buyer;
 - (b) Despatch shall be deemed to have taken place; and
 - (c) the Buyer shall pay to the Seller costs and expenses including storage and insurance charges arising from its failure.

5. DESPATCH:

- (a) All times or dates given for Despatch of the Goods or completion of Services shall be in good faith but shall not be the essence of any Contract nor shall the Seller be under any liability for delay in Despatch occasioned by any circumstances whatsoever beyond the control of the Seller.
- (b) Unless agreed in writing and signed on behalf of the Seller all Goods are supplied ex-works of the Seller.
- (c) Where the Goods are handed to a carrier for carriage to the Buyer or to a port for export any such carrier shall be deemed to be the Agent of the Buyer and not of the Seller for all purposes.
- (d) The Buyer shall inspect the Goods supplied immediately upon receipt and no liability for non delivery, partial loss or damage to the Goods occurring prior to delivery or where the Goods are not in accordance with the Contract will attach to the Seller unless claims to that effect are notified in writing by the Buyer to the Seller (with a copy to the carrier if applicable):
 - (i) Within seven days of Despatch for partial loss or damage or non compliance with the Contract or
 - (ii) Within twenty one days of the invoice date for non delivery.
- (e) If the Buyer shall fail to give notice in accordance with Condition 5(d) above the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be bound to accept and pay for the same accordingly.
- (f) Without prejudice to any other rights it may have the Seller may withhold delivery of any of the Goods or any installment thereof if it has reasonable grounds for doubting the buyer's ability to pay the price thereof.
- (g) The Buyer cannot refuse to accept delivery of part consignments in partial satisfaction of any Contract for sale or supply and no default or failure by the Seller in respect of one or more consignments shall vitiate the Contract.

6. PASSING OF TITLE AND RISK:

- (a) The Buyer hereby purchases only such title in the Goods as the Seller may have but not further or otherwise.
- (b) Notwithstanding the earlier passing of risk title in the Goods shall not pass to the Buyer until all sums due from the Buyer to the Seller have been paid for in full.
- (c) For so long as the Buyer remains in possession of the goods whilst title thereto remains with the Seller:-
 - (i) the Buyer shall be bailee of the Goods for the Supplier and shall hold the Goods as Trustee for and on behalf of the Seller and in such circumstances there shall arise in fiduciary relationship between the Buyer and the Seller upon the terms as herein appears;
 - (ii) the Buyer shall store the Goods separately from any other Goods so that they are identifiable as Property of the Seller;
 - (iii) the Buyer shall take good care of the Goods and is liable to fully insure the same for loss damage or destruction and benefit of any insurance claim in respect of the Goods shall be held in trust on behalf of the Seller;
 - (v) the Buyer shall hold in trust the entire proceeds of sale of the Goods in a separate designated account and shall at all times be identifiable as the Seller's money.
- (d) Without prejudice to the generality of Clause (b) hereof the Buyer shall have the right to sell the Goods subject as herein after mentioned and subject to the Seller not withdrawing such right to sell on written notice to the Buyer.
- (e) At any time after the Buyer is in default of payment on the due date of any sum due by the Buyer to the Seller or if the Seller upon notice withdraws the Buyer's right to sell the Goods or if the Buyer shall commit an act of bankruptcy or suffer any execution to be levied upon his property or if being a Company it suffers a Receiver to be appointed of its undertaking or is placed in liquidation or is the subject of an Administration Order (such eventualities or any one of them as the context shall demand herein after called "Such Event") then in any Such Event the Seller may forthwith enter the premises of or occupied by the Buyer for the purposes of repossessing the Goods and the Buyer hereby grants to the Seller a License for that purpose.

7. CONDITIONS WARRANTIES AND EXCLUSIONS:

- (a) Representations of the appearance of Goods vary in every case according to the nature and circumstances of production and the treatment of the Goods after leaving the Seller's premises. All representations furnished by the Seller in respect of the Goods whether or not in writing are furnished only on the basis that they will not form part of the Contract or be relied upon by the Buyer for any purpose unless and to the extent that they are expressly warranted or guaranteed in writing by the Seller and are as such expressly stated by the Seller to form part of the Contract.
- (b) Any condition or warranties (whether expressed or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of fitness of the Services for any particular purpose even if that purpose is made known expressly or by implication to the Seller are hereby expressly negated.
- (c) (i) Nothing herein shall impose any liability upon the Seller in respect of any defect in the Goods arising out of acts omission negligence or default of the Buyer its servants or agents including in particular without prejudice to the generality of the foregoing any failure by the Buyer to adequately correct proofs submitted by the Seller or where imperfect work is caused by defects in or unsuitability of materials supplied or specified by the Buyer.
 - (ii) Where any text, illustrations or other matter is supplied to the Seller in a digitised form, or on a disc or through a modem and the data so received is not suitable for outputting on the Seller's equipment the Seller will take every care to secure the best results but shall not be responsible for:-
 - (a) any imperfect work caused by the unsuitability of such data; and
 - (b) any delay in delivery occasioned by the additional work;
- (d) Save as herein provided a Contract or order may not be cancelled by the Buyer except by agreement in writing of both parties and upon payment to the Seller of such amount as may be necessary to indemnify the Seller against all losses resulting from the said cancellations.
- (e) The Seller shall not be required to print any matter which in the Seller's opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.
- (f) The Buyer shall indemnify and keep indemnified the Seller against any and all proceedings claims damages losses expenses or liabilities (on a full indemnity basis) which the Seller may incur or sustain as a direct or indirect result of or in connection with any infringement of any patent copyright design trademark or other industrial or proprietary or personal rights (including libel) contained in any material printed by the Seller for the Buyer or relating to any of the Services hereby provided to the Buyer or based upon any work prepared by the Seller for the Buyer and approved by the Buyer either orally or in writing prior to publication.
- (g) (i) Metal, film, glass and other materials owned and used by the Seller in the production of type, plates, moulds, stereotypes, electropypes, film setting, negatives, positives and the like shall remain the Seller's exclusive property. Such items when supplied by the Buyer shall be at the Buyer's risk both whilst in transit and whilst under the Seller's control and shall remain the Buyer's property but shall be subject to the Seller's lien in the event of non payment of sums due.
 - (ii) Type may be distributed and lithographic, photogravure or other work effaced immediately after the Contract is executed unless otherwise agreed.
 - (h) Notwithstanding any provision contained in these Conditions of Contract the Seller shall have a lien on all products and property in its possession including the Goods (whether worked on or not and whether the exclusive property of the Buyer or not) in respect of all unpaid debts due from the Buyer and shall be entitled on the expiration of fourteen day notice (unless all sums due to the Seller have been paid) to sell the products and property at the best price readily obtainable and after deducting the selling and other costs and expenses shall charge the Buyer for any shortfall below the amounts owing to the Seller or shall account to the Buyer for any surplus.

8. LIABILITY:

- (a) The Seller's whole liability and the Buyer's sole remedies for any default in respect of Goods or Services supplied shall be as follows save that this Clause shall not confer any rights or remedies to which the Buyer would not otherwise be legally entitled:
- (b) The Seller does not exclude liability for:-
 - (i) death or personal injury and subject to the provisions of Sub-clause (d) below direct physical damage to tangible property of the Buyer to such extent that such damage death or injury is caused by the negligence of the Seller its employees agents or subcontractors and
 - (ii) any breach by the Seller of any term as to title quiet possession and freedom from encumbrances which may be implied under the Sale of Goods Act 1979
- (c) For any default relating to Goods delivered hereunder whether occurring at the time of delivery or thereafter then subject to the other provisions of this Clause the Buyer shall give written notice of any default within 72 hours of its being discovered by the Buyer. The Buyer is advised to examine the Goods upon delivery and no claim will be entertained unless notified within seven days of the date of delivery. Thereafter, the Buyer shall allow the Seller every reasonable opportunity to replace the Goods or the part in question.
- (d) In the event of any valid claim in respect of any default the Seller shall be entitled to replace the Goods or Services (or the part in question) or remedy the Service free of charge to the Buyer or at the Seller's discretion refund to the Buyer the price of the Contract (or proportionate part of that price) but the Seller shall have no further liability to the buyer.
- (e) The Seller's maximum total liability for any one default shall not exceed the purchase price of the Goods or Services in respect of which the Seller is liable. Should any limitation in these Conditions be held invalid any liability thereby arising shall nevertheless be subject to this monetary unit.
- (f) In no event shall the Seller be liable for the following loss or damage howsoever caused even if foreseeable by the Seller:
 - (i) economic loss (loss or profits business revenue goodwill or anticipated savings) or
 - (ii) any other special indirect or consequential loss or damages (except expenses incurred with regard to death or personal injury) and
 - (iii) claims against the Buyer by any other parties.
- (g) The Seller shall be under no liability whatever if the price paid for the Goods or Services has not been paid by the due date for payment.
- (h) No valid claim shall arise in respect of quantities supplied to the Buyer in accordance with clause 3b) hereof.

9. PERIODICAL PUBLICATIONS:

Without prejudice to the rights and remedies of the Seller a re-occurring Contract for the provision of Services relating to a periodical publication may not be terminated voluntarily by either the Seller or the Buyer unless thirteen weeks notice in writing is given in the case of other periodicals. Notice may be given at any time but wherever possible should be given after completion of work on any one issue. Nevertheless the Seller may terminate any such Contract forthwith should any sum due thereunder remain unpaid.

10. FORCE MAJEURE:

- (a) The Seller shall be entitled to delay or cancel delivery or reduce the amount delivered if it is prevented or hindered or delayed through any circumstances beyond its control including but not limited to strikes accidents breakdowns or unavailability of materials from the normal source of Supply.
- (b) If a Contract or Order or any part thereof shall become impossible of performance or otherwise frustrated by reason beyond the control of the Seller or as a result of the Buyer's default the Seller shall be entitled to a reasonable remuneration for work done together with reimbursement of all expenses until the date of such frustration.

11. ANCILLARY:

- (a) The Contract for Supply and Sale of Services is personal to the Buyer and incapable of assignment or charge without the written consent of the Seller.
- (b) For the purposes of the Unfair Contract Terms Act 1977 the parties hereto acknowledge that the Terms and Conditions hereof are reasonable as between two commercial parties of independent bargaining strengths.
- (c) In the event of any Condition being judged unreasonable it shall be modified to the extent necessary to make it reasonable and the remaining Conditions or part Conditions shall nevertheless remain full force and effect.
- (d) If any provision of this agreement becomes unlawful unenforceable or void such provision shall to the extent required be deemed to be deleted from this agreement and rendered ineffective as far as possible for the purpose of construing performing or enforcing this agreement and without modifying the remaining provisions hereof which shall continue in full force and effect.
- (e) This Contract shall in all respects be governed by English Law and the Buyer and Seller agree to submit to the non-exclusive jurisdiction of the High Court of Justice in England and Wales.