

HARLECH

PRINT & PAPER MANAGEMENT

HARLECH PPM LIMITED

GENERAL CONDITIONS OF SALE

The Customer's attention is particularly drawn to the provisions of clause 13.

1. **Interpretation**

1.1 Definitions. In these Conditions, the following definitions apply:

Carrier	Royal Mail Group Limited or such other postal or parcel delivery service utilised by the Supplier by agreement with the Customer.
Commencement Date	has the meaning set out in clause 2.3;
Conditions	these terms and conditions as amended from time to time in accordance with clause 2.5;
Confidential Information	any information which is secret or confidential in whatever form and whether disclosed in writing, orally or electronically and including without limitation business secrets or secret technical know-how;
Contract	the contract between the Supplier and the Customer for the supply of the Products in accordance with these Conditions;
Customer	the person or firm who agrees to purchase the Products from the Supplier;
Customer Inserts	any item of printed paper in any format or product provided by the Customer or a third party on its behalf to the Supplier to be inserted in or packaged for delivery with the Product;
Customer Materials	information and materials the Customer supplies to the Supplier to enable the Supplier to produce the Products in accordance with the Contract including but not limited to copy and design layout for the Products;
Customer Stock	means surplus Customer Inserts, undelivered instalments of the Products or any surplus product

purchased by the Supplier for the production of the Products or against the prospective future orders from the Customer which have been paid for by the Customer;

Customer Warranty

means the warranties in clauses 6.1 and 11.3;

Data

any data concerning the Customer's clients or any third party provided to the Supplier for the purpose of the Contract;

Database

means a collection of information on any person and Data to be stored, amended, deleted or retrieved using a computer system;

Data Controller

has the meaning set out in the Data Protection Act 1998;

Data Protection Legislation

(i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) ("GDPR") and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law;

Data Subject

an individual who is the subject of Personal Data;

Delivery

has the meaning set out in clauses 4.1 and 4.2;

Force Majeure Event

has the meaning given to it in clause 15.1;

Group Company

means any Subsidiaries or Holding Companies of the Supplier from time to time and any Subsidiary of any Holding Company from time to time;

Intellectual Property Rights

patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Law

the law of England and Wales;

Liabilities

means all liabilities, costs, expenses, damages and losses, (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses);

Order

has the meaning set out in clause 2.1;

Quotation

the quality and description of the Products which the Supplier may be willing to provide to the Customer at the Price set out by the Supplier in writing to the Customer on the Suppliers quotation form;

Personal Data

has the meaning given to it in the Data Protection Legislation relating to Personal Data in respect of which the Supplier is the Data Controller and in relation to which the Company is providing processing under the terms of this Contract;

Price	means the total price of the Product as specified in the Quotation, subject to clause 9;
Process	has the meaning set out in the Data Protection Legislation;
Processing	has the meaning set out in the Data Protection Legislation;
Products	the products (or any part of them) to be produced, supplied and/or delivered to the Customer or third parties at the direction of the Customer as described in the Quotation;
Proofs	proofs of any printed material to be copied onto or utilised in the Products and/or design lay outs for the Products;
Subsidiary and Holding Company	in relation to a company mean "subsidiary" and "holding company" as defined in section 1159 of the Companies Act 2006;
Supplier	Harlech PPM Limited registered in England and Wales with company number 10094154;
Supplier's Bank Account	the Supplier's bank account details provided to the Customer in writing;
Working Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

1.2 Construction. In these Conditions, the following rules apply :

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- 1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted, or as replaced by any applicable substitute Law in place at any future time during the Contract;
- 1.2.3 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.4 a reference to **writing** or **written** includes e-mails.

2. **Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase the Products in accordance with a Quotation. No Quotation can be the subject of any Order save on these Conditions.
- 2.2 Any Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Working Days from its date of issue.
- 2.3 No Order placed by the Customer shall be deemed to be accepted by the Supplier until the Order is either acknowledged by the Supplier in writing or the Supplier begins producing the Products at which point and on which date the Contract shall come into existence, (the Commencement Date).
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and no terms and conditions included in with or contained in any documentation produced by the Customer will form part of the Contract whether or not such documents are referred to in the Contract. Any variation of the Contract will be on these

conditions to the exclusion of all other terms and conditions and any variation to a Quotation or Order or any written representations will be ineffective unless expressly agreed in writing and signed by an authorised representative of the Supplier.

3. **Products**

3.1 The Customer must ensure that the terms of the Quotation are complete and accurate before making an offer to purchase the Products by placing an Order.

3.2 To the extent that the Products are to be manufactured in accordance with Customer Materials, the Customer shall indemnify the Supplier against all Liabilities suffered or incurred by the Supplier in connection with any liabilities arising from any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights or other legal rights arising out of or in connection with the Supplier's use of the Customer Materials. This clause 3.2 shall survive termination of the Contract

3.3 Where the Supplier is supplied with Customer Materials or Customer Inserts which are required for the production of or delivery of the Products:-

3.3.1 the Supplier will not be liable for any delay in or ability to produce the Products and perform the Contract or for any defect or error in the Products or for any additional costs or losses associated with their delay, defect or otherwise caused by any breach of any Customer Warranty in relation to the Customer Materials and/or the Customer Inserts;

3.3.2 it is agreed that the Supplier may reject any of the Customer Materials and/or the Customer Inserts which are in its opinion in breach of the Customer Warranty but the Supplier has no liability, responsibility or obligation to verify if any of the Customer Materials and/or the Customer Inserts are in breach of any Customer Warranty or otherwise.

3.4 The Supplier reserves the right to amend the Products:-

3.4.1.1 where this is required to comply with any applicable statutory or regulatory requirements;

3.4.1.2 to prevent the Products infringing any third party rights or where the Supplier reasonably believes the Products will do so;

3.4.1.3 where in the reasonable opinion of the Supplier the changes to the quantity and description of the Products does not materially affect their performance or quality;

3.4.1.4 where the Customer Materials and/or the Customer Inserts do not comply with the reasonable requirements of any Carrier or any law or regulation relating to items to be posted or packaged through any Carrier.

3.5 The Customer agrees that any variation in the quantity of the Products produced by the Supplier against the quantities in the Order shall not be in breach of the Contract within a tolerance of plus or minus 5%. A pro-rata variation in the Contract Price will be credited to the Customer for under production of the Products and a charge for excess levied by invoice raised by the Supplier.

4. **Delivery of Goods**

4.1 Unless otherwise specified in the Quotation Delivery shall occur when

4.1.1 the Products are collected by the Customer from the Supplier or the Suppliers Sub-contractor;

4.1.2 the Products are delivered by the Supplier or the Suppliers Sub-contractor to the Customer or its nominated recipient;

4.1.3 the Products are delivered by the Supplier or its Sub-contractor to a Carrier for the purpose of mailing the Products to multiple persons where a Database has been supplied by the Customer to the Supplier.

4.2 Where the Quotation specifies the Products are to be delivered in instalments, Delivery shall occur in accordance with clause 4.1 in respect of each separate instalment.

4.3 Any dates quoted for Delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with

adequate or correct delivery instructions, a Database or any other instructions to the Supplier, whether specified in the Quotation or not, that are reasonably required to be supplied by the Customer to the Supplier for the Supplier to supply and delivery of the Products.

- 4.4 If under the terms of the Quotation the Supplier is to deliver the Products by instalment, they shall be invoiced and paid for separately for each instalment unless otherwise specified in the Quotation.
- 4.5 If the Supplier is providing delivery of the Products in instalments or at the request of the Customer in anticipation of any further order for similar products to the Products the Supplier is required or requested to store part of the Products, Customer Materials or Customer Inserts which are owned by the Customer or have been purchased by the Supplier for the purpose of supplying the Products or any future order by the Customer, the Supplier is entitled to charge the Customer for the storage and all related costs and expenses of storing the Products, the Customer Materials and/or the Customer Inserts, including insurance.
- 4.6 Where the Contract requires the Products to be delivered by a Carrier the Supplier shall not be liable for any errors, omissions, delay, losses, additional costs or the inability of the Carrier to perform a delivery caused as a consequence of any of the Products, or the Customer Inserts not meeting the requirements, terms or conditions of the Carrier or any law or regulation relating to the delivery of the Products or any part thereof.
- 4.7 The Supplier shall be entitled to reject any Customer Inserts if they are or are in the reasonable opinion of the Supplier, offensive, defamatory, or unlawful in any way or otherwise causes the Supplier any liability to any third party or may bring the Supplier into disrepute.
- 4.8 If there is any delay to the production of the Products or the Delivery or any further work is required to be undertaken outside the Quotation by the Supplier as a consequence of the Customer Materials and/or the Customer Inserts being in breach of the Conditions the Customer shall bear all the costs consequently incurred by the Supplier.

5. **Customer Obligations**

- 5.1 The Supplier will provide the Customer with Proofs. The Customer shall correct any errors and the Customer shall be entitled to edit the Proofs. The Supplier will produce further

Proofs to the Customer for approval after the Customer has made any amendments, the reasonable cost of such Proofs to be payable by the Customer to the Supplier. The Supplier may delay any date specified for delivery by any days during which it awaits signed-off Proofs from date it first provides any Proofs to the Customer.

- 5.2 The Customer is required to sign-off the Proofs as approved by it before the Supplier will begin production. The Supplier is not responsible for any error in the signed off Proofs which are the Customer's sole responsibility and the Supplier shall not be liable for any errors arising in or from the Products produced from the signed-off Proofs.
- 5.3 If any error is identified after the Proofs are signed-off, the cost of any corrective work required will be at the Customer's expense and the Supplier shall be entitled to charge and invoice the Customer separately for all its costs for such corrective work immediately upon completion of the corrective work.
- 5.4 The Supplier shall not be required to proceed to production upon receipt of any signed-off Proofs if in its opinion any part is unclear or ambiguous.
- 5.5 The Customer shall:
- 5.5.1 ensure that the detail of the Quotation is complete and accurate;
 - 5.5.2 co-operate with the Supplier in all matters relating to the Products and in reasonable time to enable the Supplier to comply with the Contract;
 - 5.5.3 provide the Supplier with the Customer Materials and Customer Inserts as the Supplier may reasonably require to supply the Products in a reasonable time to enable the Supplier to comply with the terms of the Contract, and ensure that they are accurate in all respects;
 - 5.5.4 obtain and maintain all necessary licences, permissions and consents which may be required for any Customer Materials, Customer Inserts and the Products;
- 5.6 If the Supplier's performance of any of its obligations in respect of the Products is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation including a breach of any Customer Warranty, (Customer Default):

- 5.6.1 the Supplier shall without limiting its other rights or remedies have the right to suspend production of the Products until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 5.6.2 the Supplier shall not be liable for any Liabilities sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Contract; and
- 5.6.3 the Customer shall reimburse the Supplier on written demand for any costs incurred by or losses sustained by the Supplier arising directly or indirectly from any Customer Default.

6. **Property Rights**

- 6.1 The Customer warrants that in respect of any Customer Materials and Customer Inserts provided by the Customer to the Supplier:-
 - 6.1.1 all Intellectual Property Rights are owned by the Customer or the Customer has, in respect of any third party Intellectual Property Rights, obtain the necessary written licence or permission required to entitle the Supplier to utilise such Intellectual Property Rights;
 - 6.1.2 the Customer Materials and Customer Inserts comply with all applicable laws in any jurisdiction in which the Products are to be produced and/or delivered;
 - 6.1.3 the Customer Materials and Customer Inserts comply with any advertising standards or codes of practice or other marketing standards and will not otherwise bring the Supplier or any third party associated with the Products into disrepute or is likely to do so.
 - 6.1.4 The Customer Inserts are owned by the Customer or the Customer is otherwise lawfully entitled to supply them to the Supplier for use with the Products.
- 6.2 If legally required the Customer grants the Supplier a non-exclusive licence to use any Intellectual Property Rights in the Customer Materials and the Customer Inserts for the purpose of producing the Products in accordance with the Contract.

6.3 The Customer consents to the Supplier utilising samples of the Products or part thereof in its own promotional materials and on its website with or without identifying them as the Customers and without the requirement of any further approval.

7. **Cancellation**

If the Customer cancels the Contract for the Products it shall indemnify the Supplier in full for all the Supplier's losses howsoever incurred including whether direct or indirect, consequential loss or damage, all costs and loss of profit. The Supplier shall be required to make reasonable efforts to mitigate its loss.

8. **Risk and Title**

8.1 The risk and title in the Products shall pass from the Supplier to the Customer on Delivery.

8.2 Until the risk in the Products passes from the Supplier under clause 8.1 above, the Supplier shall insure, and shall ensure its sub-contractors insure the Products for the cost of replacement of the Products. Neither the Supplier nor its sub-contractor shall be liable for any other loss or damage of the Customer howsoever incurred including whether direct or indirect, consequential, loss or damage all costs and loss of profit.

8.3 If the Customer requires any special terms as to delivery or risk, these must be in writing and set out in the Quotation.

8.4 The delivery of the Products by the Supplier or its contractors to the Carrier shall be evidence of the delivery of all of the quantity of the Products in accordance with the Quotation and the Products' fitness for purpose unless the Customer can provide conclusive evidence proving the contrary.

8.5 If due to any Customer Default the Supplier is unable to deliver the Products, the risk passes to the Customer. The Supplier or its contractor will continue to insure the Products at the Customer's expense and the Supplier is entitled to be reimbursed in full by the Customer.

8.6 If Customer Stock is not required within a twelve month period from the Commencement Date, the Supplier may dispose of the Customer Stock at the Customer's cost and shall be entitled to deduct from any monies received for the Customer Stock the costs of disposal

including storage and insurance costs. Any balance outstanding may be invoiced by the Supplier to the Customer.

9. **Charges and payment**

9.1 The Customer shall pay for the Products on the terms set out in the Quotation. In the absence of specific terms in the Quotation the Customer shall pay a deposit to the Supplier of that percentage of the Price as is set out in the Quotation within two working days of placing the Order and the balance of all sums due in respect of the Products under the Quotation or these Conditions within 14 days of receipt of an invoice from the Supplier or if more than one, each invoice.

9.2 In the absence of any specific price for the transport and delivery of the Product in the Quotation the Price is exclusive of all costs and charges relating to delivery of the Products.

9.3 The Supplier is entitled to charge for any services provided in addition to those specified in Quotation on a basis of costs plus reasonable profit.

9.4 The Supplier can vary the Quotation at any time before the Commencement Date.

9.5 The Supplier may provide an invoice to the Customer by email, post or by hand to the Customer's place of business.

9.6 The Supplier may add additional charges to the Price without notice to the Customer due to:-

9.6.1 any increase in import or export tax and/or duties or other charges since the date of the Quotation;

9.6.2 any delay caused by the Customer including any failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products or any Customer Default;

9.6.3 any request by the Customer to change quantities, specifications or delivery dates of the Products;

9.6.4 any breach by the Customer of any Customer Warranty;

9.6.5 any fact beyond the reasonable control of the Supplier;

- 9.6.6 any value added tax or other applicable tax which has increased or been required to be added since the date of the Quotation.
 - 9.6.7 any factor beyond the control of the Supplier (including foreign exchange fluctuations and increased Carrier charges);
 - 9.6.8 any delay caused by any instructions of the Customer in respect of the Products;
or
 - 9.6.9 under any other specific Condition which entitles the Supplier to raise additional charges to the Customer.
- 9.7 The Customer shall pay each invoice submitted by the Supplier;
- 9.7.1 within 30 days of the date of the invoice; and
 - 9.7.2 in full and in cleared funds to the Supplier's Bank Account.
- 9.8 Where it is agreed that postage and/or packaging costs shall be charged to the Supplier's account with a Carrier the Customer shall pay to the Supplier the gross amount of the postage (including VAT if required) or carriage charges prior to the Products being delivered to the Carrier or being collected by the Carrier from the Supplier or the Supplier's sub-contractor. The Supplier shall be entitled to withhold delivery of the Products to the Carrier until the Customer has paid such sum and the Supplier shall not be liable for any loss damage or expense incurred or sustained by the Customer as a result of any delay as a result of the Customer failing to comply this clause.
- 9.9 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT.
- 9.10 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Lloyds Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9.12 The Supplier will use its reasonable endeavour to give the Customer notice of any increase in the Price under clause 9.6 as soon as reasonably practical.

9.13 Time is of the essence for payment.

10. **Data Protection and Databases**

10.1 Save as set out in clause 10.2, the Supplier and the Customer acknowledge that for the purpose of Data Protection Legislation the Customer is the Data Controller and the Supplier is the Data Processor in respect of any Personal Data.

10.2 The parties acknowledge and agree that in certain circumstances the Customer may transfer Personal Data directly to the Supplier's printer subcontractors and such Personal Data shall not be processed by the Supplier. Consequently, the Supplier will not be liable for any claim arising from any action or omission by the Supplier to the extent that such action or omission resulted directly from the Customer's directions with regards to such Personal Data and in the event of such a claim the Customer shall indemnify the Supplier against all losses, claims, costs, damages and expenses the Supplier incurs.

10.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10.3 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

10.4 The Supplier (and its group companies) may hold any Personal Data provided to it or transfer it to the Supplier's financiers for the purpose of assessing the level of credit which should be extended to the Customer or for the purpose of obtaining sales ledger finance. The Supplier and/or the Supplier's financiers will from time to time make searches with a credit reference agency, which will keep a record of that search and will share that information with other businesses. The Supplier will also monitor and record information relating to the Customer's trade credit performance and such records will be made available to other organisations to assess applications for credit. The information may also be used

for the future marketing or related products and services unless the subject of the personal data gives the Supplier notice in writing to the contrary.

- 10.5 Without prejudice to the generality of clause 10.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- 10.6 The Supplier shall process the Personal Data only in accordance with the Customer's instructions and shall not process the Personal Data for any purpose other than those expressly authorised by the Customer for the purposes of the Contract.
- 10.7 The Supplier shall take reasonable steps to ensure the reliability of all its employees, agents and sub-contractors who have access to the Personal Data.
- 10.8 The Supplier warrants that having regard to the state of technological development and the cost of implementing the measures, it will

take appropriate technical and organisational measures against all unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of or damage to Personal Data to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss destruction or damage and the nature of the Personal Data to be protected and shall take reasonable steps to ensure it complies with those measures.

- 10.9 Each party agrees to indemnify and keep indemnified and at its own expense the other party against all Liabilities incurred by the other party for which the other party may become liable due to any failure by the first party or its employees agents or sub-contractors to comply with any of its obligations under the terms of this clause 10.
- 10.10 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier to the extent that such action or omission resulted directly from the Customer's directions and in the event of such a claim the Customer shall indemnify the Supplier against all losses, claims, costs, damages and expenses the Supplier incurs.

- 10.11 The Supplier may authorise a third party sub-contractor to process the Personal Data.
- 10.12 Where the Contract requires the Products to be delivered to a person by a Carrier the Customer shall provide a Database to be used for the preparation of the Products for delivery. If the Database is not supplied in a readable or useable form as required by the Supplier in reasonable time to enable the Supplier to prepare the Products for delivery, the Supplier shall not be liable for any delay or loss arising from it.

11. **Conditions and Warranties**

- 11.1 The Supplier warrants the Products will be provided with reasonable care and skill.
- 11.2 The Supplier warrants that the Products will be of satisfactory quality within the meaning of the Sale of Goods Act 1994 or any statutory obligations applicable to the Contract in force at the Commencement Date.
- 11.3 The Customer warrants that:-
- 11.3.1 Any Data, Database, Customer Materials or Customer Inserts provided to the Supplier shall:-
 - 11.3.1.1 not be defamatory, offensive or abusive;
 - 11.3.1.2 not be in breach of any law regulation or code of practice;
 - 11.3.1.3 not to breach any Intellectual Property Rights of any third party or any other third party right or legal entitlement;
 - 11.3.1.4 not be of any obscene or threatening in nature;
 - 11.3.1.5 not otherwise likely to bring the Supplier into disrepute;
 - 11.3.1.6 comply with the Data Protection Legislation in all respects.
 - 11.3.2 It shall comply with the provisions of clauses 5.1, 5.5, 9.1, 9.7, 9.8, 9.11 and 10.3 of these Conditions.

12. **Confidentiality**

The parties shall keep confidential all Confidential Information belonging to each other which has been disclosed under the terms of the Contract or in connection with it, save that the Supplier is authorised to provide such Confidential Information about the Customer to its employees, agents or sub-contractors that needed to know for the purpose of providing the Products under the terms of this contract. The Supplier shall take reasonable steps to ensure its employees, agents and sub-contractors comply with the obligations set out in this clause as though they were a party to the Contract. The party receiving this Confidential Information is authorised to disclose such information for the purpose of this Contract.

13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

13.1.2 fraud or fraudulent misrepresentation;

13.1.3 breach of any terms implied by Law which the Supplier is not entitled to exclude;

13.2 Subject to clause 13.1:

13.2.1 the Supplier hereby excludes to the extent permissible in law all conditions, terms, warranties and stipulations expressed which but for the exclusions set out in here may exist in favour of the Customer save for those expressly set out in this Contract.

13.2.2 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

13.2.3 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances

exceed the Price excluding VAT or where delivery is in instalments, to the price of that instalment to which the breach or alleged breach of the Supplier relates.

- 13.3 The Customer shall indemnify the Supplier against all liability actions proceedings costs claims and demands or damages and expenses in any way connected with the Contract brought or threatened to be brought against the Supplier by any third party except to the extent that the Supplier is liable to the Customer in accordance with these Conditions.
- 13.4 The Customer shall indemnify and keep indemnified the Supplier against all actions, losses, claims, damage and expenses arising directly or indirectly from;
- 13.4.1 Any breach or alleged breach of the Customer Warranties;
- 13.4.2 Any third party claim against the Supplier alleging infringement of any Intellectual Property Rights or any other rights in the Customer Material or the Customer Inserts; and
- 13.4.3 Any breach or alleged breach of this Contract by it.
- 13.5 This clause shall survive termination of the Contract.

14. **Termination**

- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 Working Days after receipt of notice in writing to do so;
- 14.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 14.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 14.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Working Days;
- 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 14.1.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 14.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive);
- 14.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

- 14.1.12 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 14.1.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 14.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of the Products or all further deliveries of the Products under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.9, or the Supplier reasonably believes that the Customer is about to become subject to any of them or any breach of a term of this Contract until it is remedied if capable of remedy or the contract is terminated.
- 14.4 On termination of the Contract for any reason:
- 14.4.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.4.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 14.4.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
15. **Force majeure**
- 15.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other

industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- 15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents the Supplier from providing any of the Products for more than 6 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16. **General**

16.1 **Assignment and other dealings.**

16.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

16.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 **Notices.**

16.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or e-mail.

16.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the other parties main business address if sent

by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Working Day after transmission unless otherwise specified.

16.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

16.3 **Severance.**

16.3.1 Failure to pay any amount due on the date for payment is a material breach which is not capable of remedy.

16.3.2 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.3.3 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16.4 **Dispute Resolution.**

16.4.1 If any dispute arises out of the Contract (a Dispute) the parties will attempt to resolve it by negotiating in good faith. If any Dispute remains unresolved within 15 Working Days then either party is free to pursue the rights granted to it under the contract through the Courts. This sub-clause will not prevent either party from:-

16.4.1.1 seeking an injunction in the case of any breach or threatened breach by the other;

16.4.1.2 commencing any proceedings where there is a reasonable necessity to avoid the loss of a claim due to the limitation period;

16.4.1.3 commencing proceedings in the case of non-payment of an invoice.

- 16.5 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.7 **Restrictive covenants.** For a period of 12 months from the Commencement Date the Customer shall not either directly or indirectly solicit or entice away or attempt to solicit or entice away from the employment of the Supplier or the Supplier's Group or engagement by or under contract with the Supplier or the Supplier Group, whether directly or indirectly, including through a service company, any person who is or has been involved in the provision of the Products to a material extent, without the prior written agreement of the Supplier. If any such person is employed or engaged by the Customer within 12 months from the Commencement Date whether directly or indirectly including through a service company, it is presumed that the Customer has directly or indirectly solicited or enticed away from the Supplier such a person.
- 16.8 **Transfer of Undertakings (Protection of Employment) Regulations 2006; (TUPE).** If the contract of employment of any employee is found or alleged to have effect after the Commencement Date as if originally made with the Supplier or any member of the Supplier's Group pursuant to TUPE or any other Law, the Supplier or the relevant member of the Supplier's Group shall, at its discretion terminate the employment of the individual concerned within one month of becoming aware of a transfer pursuant to TUPE or any other Law and the Customer shall indemnify and keep indemnified the Supplier in full against any and all claims demands liabilities and losses arising out of or in connection with such a finding or allegation. This indemnity shall include but not be limited to the cost of employing the individual concerned, the termination of that employment and any liabilities arising in relation to the employment or the termination.

- 16.9 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms unless otherwise stated herein.
- 16.10 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- 16.11 **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 16.12 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).