

BERCKER UK LTD TERMS OF TRADING

INTERPRETATION

'the Company' means Bercker UK Ltd, a company registered in England (number 5189257), whose registered office is situated at John Stow House, 18 Bevis Marks, London, EC3A 7ED
 'the Customer' means the person or persons (which shall be deemed to include corporations and partnerships) with whom this contract is made
 'this contract' means each contract or number of contracts (as the case maybe) to provide services and supply goods, made between the Customer and the Company
 'goods' see clause 6.4

1. PRICE AND ADDITIONAL CHARGES

1.1 Estimates are based on costs of production at the time given and are valid for 30 days from the date stated on the estimate. Prices will be those quoted or (if none) the Company's list price prevailing at the date of acceptance of order. Material prices will only become firm upon acknowledgement by the Company that the Customer's order has been received.
 1.2 Prices are exclusive of value added tax (unless otherwise specifically stated). Value added tax will, where required by law, be added at the prevailing rate to the cost of goods at the time of invoice.
 1.3 All work done, including that undertaken by way of trial or experiment, shall be chargeable at contractual rates.
 1.4 Additional charges may be made to cover the cost of additional work where copy supplied is late, is unclear or not legible. They may also be made if scheduled delivery requires overtime or additional cost; where Customer alterations require additional proofs or if the Customer changes or specifies style, type or layout previously left to the Company's judgment (or unspecified); where materials supplied by the Customer are found to be unsuitable, defective or are delivered to the Company late or in a form which cannot be accessed without adjusting or supplementing the Company's equipment, in delivering to an address other than that notified in the estimate (see clause 4.2) for storage (see clause 3.3 and 7.2); and for administration (see clause 7.3).

2. PROOFS

2.1 The Customer shall be responsible for notifying the Company of any error or inaccuracy in proofs (in whatever form) or other work submitted for the Customer's approval, and the Company shall not be liable for any loss or damage arising from the Customer's failure or delay in doing so. Due to differences in equipment, paper, inks and other conditions between colour proofing and colour production runs, a reasonable variation in colour between proofs and the completed job will be deemed acceptable unless otherwise specifically agreed in accordance with clause 16.6 below.

3. PAYMENT

3.1 Subject to clauses 3.2 to 3.4 invoices will be rendered upon delivery and become payable upon presentation. Invoices sent by mail and posted within the UK will be deemed presented on the second working day after posting (the fourth working day after posting if posted by second class post). Invoices originating elsewhere in the EU will be dispatched by airmail and deemed presented on the sixth working day after posting. Time shall be of the essence for payment.
 3.2 Composition shall be invoiced on completion; printing and binding shall be invoiced on completion of binding. In the case of work extending over more than three months, invoices will be rendered for work done at three monthly intervals until completion, at which time final invoices will be rendered. All invoices are payable in accordance with clause 3.1 above.
 3.3 In the event of suspension of work, delay, or default by, or of the Customer for a period of 30 days, or of the non-return or approval (as the case may be) of proofs within 60 days of submission, we may invoice for work done, materials ordered and incidental costs incurred or chargeable including storage charges at the Company's published rates.
 3.4 If payment is not made when due the Company may cancel this contract and any other contract between the Company and the Customer, suspend any further deliveries, and/or charge interest accruing on a daily basis (both before and after any judgment) on any amount unpaid by the Customer at a rate of 2 per cent per calendar month or part thereof that payment remains outstanding.
 3.5 Credit notes will be invoiced specific.

4. DELIVERY AND RISK

4.1 Delivery of work is deemed to take place when rendered by the Company. Delivery is rendered when it is indicated to the Customer that work is ready for collection from the Company or its agents.
 4.2 Unless otherwise agreed, delivery shall be to the Customer's address(es) as set out in the estimate. A charge will be made to cover any additional costs involved in delivery to a different address.
 4.3 Delivery dates are given by way of guidance only. In relation to delivery dates only, time shall not be of the essence of any contract made between the Company and the Customer unless specifically agreed in writing in accordance with clause 16.6 below. Where time is agreed to be of the essence in respect of delivery dates, damages for late delivery shall be limited to such costs as are reasonably incurred by the Customer as a direct result of said late delivery and shall not include consequential or future loss of whatsoever nature.
 4.4 Risks in goods shall pass to the Customer upon delivery and the Customer should insure accordingly.

5. CLAIMS

5.1 Damage and defects to goods must be advised in writing to the Company within three days and any claim must be made within seven clear days following receipt by the Customer, its agent or other person nominated by the Customer to receive such goods. All other claims must be made in writing to the Company within 28 days of receipt by the Customer, agent or such nominated person.

6. TITLE

6.1 Notwithstanding that risk in goods may have passed in accordance with clause 4.4 above, title to the goods remains that of the Company and does not pass to the Customer until the earliest of the following events occurs:
 6.1.1 The Company receives payment for all amounts payable by the Customer under this contract and for all other monies owed by the Customer to the Company in respect of other goods supplied or services provided by the Company;
 6.1.2 The Customer sells the goods in the ordinary course of business, in which case title to the goods shall pass to the Customer immediately before title in the goods is deemed to pass to the Customer's buyer, and the Customer shall hold the proceeds of sale as agent for the Company.
 6.1.3 The Company transfers title in respect of specified goods by separate written agreement with the Customer.
 6.2 Until title passes in accordance with clause 6.1 the Customer holds the goods as mere bailee for the Company and the Company has the right at any time to recover and sell the goods or any part of them and to enter the premises of the Customer or its staff or agents for this purpose.
 6.3 The Customer's licence to sell given in clause 6.1.2 above is immediately revoked upon the Customer entering into an arrangement with its creditors, committing any act of Bankruptcy or upon the appointment in respect of the Customer of an administrator, administrative receiver or liquidator.
 6.4 For the purposes of this contract, "goods" means printed materials, film, and CRC produced in the course of fulfilling a printing order, final form of output (whether tapes, discs, film or CRC specified to be supplied as such to the Customer in the original order, and all other goods which we have agreed to supply pursuant to this contract, but excludes lithographic plates, tapes, discs and other media belonging to the Company and used for storing digital data in the course of setting or any other work.

7. CUSTOMER'S PROPERTY

7.1 All property owned or supplied by the Customer and all property stored by the Company on behalf of the Customer will be held, worked on, and carried entirely at the Customer's risk and the Customer should insure accordingly.
 7.2 Charges will be made in accordance with the Company's published rates from time to time in force for storage of Customer's property and for the recovery and transfer of the Customer's property to the Customer or any third party.
 7.3 We may make an administration charge for retrieving, stripping down, and delivering any film which we agree to forward to the Customer.

8. VARIATIONS IN QUANTITY

8.1 The Company will endeavour to deliver the exact quantity ordered, but the Customer shall not reject any goods where the quantity delivered is within a margin of 5 per cent of the ordered quantity for work in one colour only, or within 10 per cent of the ordered quantity for other work. The price of the goods shall be adjusted to take into account the quantity actually delivered.

9. LIABILITY

9.1 The Company's liability (if any) to the Customer shall be limited to either rectification of the defect by the Company to the reasonable satisfaction of the Customer or (at the Customer's discretion) refund of any payment which the Customer has already made on account of the price (subject to deduction of any amount which we are entitled to claim from the Customer) except for liability in

respect of death or personal injury arising out of the Company's negligence.
 9.2 The Company shall not be liable for indirect or consequential loss of any whatsoever kind occasioned by delay in completing the work or delivering the goods and the Customer shall indemnify the Company against any third party claim arising out of such delay.
 9.3 Except where this contract is made with a Customer dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 or any statutory amendment thereto) all warranties and conditions implied by statute or common law are excluded. Where goods are sold under a consumer transaction the statutory rights of the Customer are not affected.

10. MATERIALS SUPPLIED BY THE CUSTOMER

10.1 The Customer warrants that:
 10.1.1 Any paper, plate, film, disc or other material supplied by the Customer is of a good condition and suitable for the purpose for which it is supplied. The Company may, at its absolute discretion, reject any such materials if it considers them to be unsuitable.
 10.1.2 All digital data supplied by the Customer, (including but not limited to software, computerised instructions materials) and any media upon which such digital data are stored, is free from all computer viruses or other instructions or sequences which may adversely affect the operation of any computer, software, program or access to any electronically held information.
 10.2 The Customer shall indemnify the Company for all direct and consequential costs and losses arising from a breach of the warranty given in clause 10.1.2 above.
 10.3 The Company shall not be liable for any loss, cost or claim caused by any defect in or unsuitability of materials supplied or specified by the Customer or for any failure or delay in supply of such materials.
 10.4 The Customer shall supply the quantities of materials advised in the Company's estimates as and when advised by the Company, which quantities may be amended at any time as work proceeds by agreement with the Customer.
 10.5 The Customer shall be responsible for retaining a copy or copies of any original electronic file and the Company shall not be liable for any loss arising from the loss or damage caused to any electronic file whilst in its possession.
 10.6 The Company shall not be responsible for checking the accuracy of data supplied on electronic file unless otherwise agreed.
 10.7 The Company shall not be required to download any digital data from its equipment or supply the same to the Customer unless otherwise agreed in writing. The Company reserves the right to make a charge for any such download or supply.

11. INSOLVENCY AND LIEN

11.1 If the Customer is unable to pay its debts as they fall due or (being a company) has a winding-up petition issued against it or receiver administrator or liquidator appointed in respect of it or (being an individual) has a bankruptcy petition issued against him or interim order made against him, without prejudice to other remedies the Company shall have the right not to proceed further with this contract or any other contract or work for the Customer. Further, the Company shall be entitled to immediately terminate this and any other contract with the Customer, and to receive immediate payment for work already carried out (whether completed or not) and for all materials purchased pursuant to this and any other contract with the Customer.
 11.2 In respect of all unpaid debts due or becoming due from the Customer the Company shall have a general lien on all the Customer's goods and property in the Company's possession (whether worked on or not) and shall be entitled to dispose of such goods or property in such manner to such person and at such price as the Company shall at its absolute discretion think fit and to apply the proceeds in or towards such debts provided that the Company shall give the Customer not less than 14 days written notice advising of its intention to exercise the powers conferred by this clause.

12. ILLEGAL MATTER

12.1 The Company shall not be required to print any matter which in its opinion is or may be libellous, an infringement of the proprietary or other rights of any third party, or otherwise illegal or of an offensive nature. Should the Customer wish the Company to print matter which the Company reasonably considers may be illegal the Customer shall indemnify the Company for any costs incurred by the Company in obtaining professional advice as to the legality of such matter prior to the Company accepting the Customer's order.
 12.2 The Customer shall at all times indemnify the Company in full against any claims, costs and expenses arising out of any illegal or libellous matter or any infringement of copyright, patent, design or of any other proprietary or personal rights contained in any material printed for or at the order of the Customer, including but not limited to unlimited legal costs, and damages payable in or out of Court settlement on advice of the Company's legal advisors.
 12.3 The Customer shall if so requested furnish the Company with proof of adequate insurance cover in respect of any payment the Customer may be required to make under clause 12.2.

14. PERIODICAL PUBLICATIONS

14.1 Subject always to the provisions of clause 11 above, a contract for the printing of a periodical publication may only be terminated by either party on 13 weeks' notice in writing in case of periodicals produced monthly or more frequently or 26 weeks in writing in the case of other periodicals. Notice may only be given after completion of work on any one issue.

15. FORCE MAJEURE

15.1 The Company shall not be liable for failure to carry out any provision of this contract for any reason beyond its reasonable control including but not limited to act of God; legislation; riot, civil unrest, war, fire, flood, drought; inadequacy or unsuitability of any instructions, electronic file or other data or materials supplied by the Customer; failure of power supply; lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute; inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Customer may by written notice to the Company elect to terminate this contract subject to having paid for work done and materials used.

16. GENERAL PROVISIONS

16.1 Subject to clause 16.6 below this document embodies the entire understanding of the parties in respect of matters contained or referred to herein and there are no promises, terms, conditions or obligations oral or written express or implied other than those contained in this contract. The Customer irrevocably and unconditionally waives any right it may have to claim damages or to rescind this contract for any misrepresentation whether or not contained in this agreement or for any breach of any warranty not contained in the contract unless said misrepresentation or warranty was made fraudulently.
 16.2 The Company may at its absolute discretion appoint agents or sub-contractors (including companies in the same Group) to undertake its obligations under this agreement, provided always that any act or omission of such agents or sub-contractors will be deemed to be the Company's act or omission.
 16.3 The Customer and the Company agree not to bring any legal action arising from this contract more than two years after the cause of action arose unless otherwise provided by applicable law without the possibility of contractual waiver.
 16.4 Failure of either party to enforce any right under this contract shall not be deemed waiver of that right or any other right or obligation under this contract.
 16.5 Pursuant to s. 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties hereto intend that no term of this contract may be enforced by a third party.
 16.6 In relation to this agreement, no warranty, waiver or variation shall have effect unless agreed in writing by the Company and signed by a Director, Officer or authorised legal representative of the Company.
 16.7 In these terms and conditions the masculine includes the feminine and the singular includes the plural and vice versa (in each case).
 16.8 Where the definition of the Customer comprises two or more persons the liability of such persons under this contract is joint and several and the events described in condition 11.1 shall be deemed to have occurred in relation to the Customer if they occur in relation to either or any of such persons.
 16.9 The Customer, in placing an order for the Company to undertake work on its behalf, signifies its agreement to the terms and conditions set out herein.
 16.10 Service of documents (including written notices pursuant to this contract) upon the Company may take place at the registered office of the Company or at Bercker Graphischer Betrieb GmbH, Hooge Weg 100, D-47623 Keweniger, Germany. The Company may at its discretion accept service of documents by facsimile or by presentation to an authorised representative of the Company. Documents served by mail shall be presumed served on the basis of the timetable set out in clause 3.1 above.
 16.11 This and any other contract between the Company and the Customer shall be governed and construed in accordance with the laws of England and the parties hereto agree to the jurisdiction of the English Courts.