

# Standard Terms and Conditions of Encore Catalogue Group

## 1. APPLICABLE CONDITIONS

(a) In these Conditions "the Company" shall mean Encore Catalogue Group, "Contract Work" shall mean any goods or services of whatsoever nature to be sold or supplied by the Company, "Contract" shall mean the documented description of Contract Work, "the Customer" shall mean any person, firm or company to whom any quotation of the Company is addressed or who enters into a Contract with the Company for the supply by the Company of Contract Works; the expression "liability whatsoever" shall include, without prejudice to the generality of the expression, liability in tort and in contract, including liability for death, personal injury, damage to, or loss of, property and all direct, indirect and consequential loss of any kind, however caused or arising but excluding any liability for death or personal injury resulting from the Company's negligence within the meaning of the Unfair Contract Terms Act 1977.

(b) These Conditions shall apply to all orders accepted by the Company who only does business thereon. Any exclusion or variation or attempted exclusion or variation of these Conditions by the Customer shall be ineffective unless expressly agreed to in writing by an authorised representative of the Company. The giving by the Customer of any instruction for the delivery of goods or for the carrying out of work or any conduct by the Customer in confirmation of any quotation purporting to incorporate these Conditions shall constitute unqualified acceptance by the Customer of these Conditions.

## 2. GENERAL

(a) All quotations are made and all orders accepted subject to the Rate Card prices and following conditions. All other conditions whatsoever are excluded from the Contract and any variation thereof unless expressly accepted by the Company in writing.

(b) A quotation is not an offer, and no Contract shall come into existence unless and until we have accepted in writing your official order to carry out Contract Work, specified in the quotation.

(c) Quotations are only valid when supplied on the Company's formal Quotation document and signed by a duly authorised representative of the Company.

## 3. PRICES

(a) All prices quoted are subject to contract and shall be held firm for 30 days from the date of the quotation.

(b) All prices quoted are subject to fluctuation in the cost of labour, materials, overheads and transport and any increase in such costs during the period of production.

(c) Authors corrections, laser proofs and program amendments will be charged extra unless otherwise stated in writing.

## 4. TAX

The Company reserves the right to charge the amount of any value added tax payable whether or not included on the estimate or invoice.

## 5. PAYMENT

(a) Unless otherwise agreed by the Company in writing, the Customer hereby agrees that payment will be made within 30 days of invoice. The Company reserves the right to levy a surcharge of 5% above The Bank of England base rate for the period overdue.

(b) Postage must be paid:

(i) in the case of mailing only, at least 3 days prior to despatch.

(ii) in the case of list and mailing, before delivery of the list.

(c) This contract is divisible. Goods supplied to each purchase order/on notification of call off/each month during the currency of the contract shall be invoiced separately. Each invoice for work performed in (any month) shall be payable by you in full, in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect or default in the goods supplied or to be supplied in any other month.

## 6. DELIVERY

(a) Time for delivery is given as accurately as possible but is not guaranteed. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.

(b) Date of delivery shall in every case be dependent upon receipt of final instructions or approval of proofs being obtained from the Customer.

(c) The Company will endeavour to comply with any reasonable request by the Customer for postponement of delivery but shall be under no obligation to do so and the Customer is obliged to take delivery as agreed under the Contract where postponement is agreed by the Company in writing the Customer shall pay all costs and expenses incurred up to the date of postponement including a reasonable charge for storage occasioned thereby.

(d) A variation of up to plus or minus 10% of the quantity ordered may occur. The Customer shall accept delivery within these limits and agreed to payment on a pro rata basis.

(e) The Company must be advised within 3 days of receipt of the goods if there is damage or under supply.

(f) Should the final delivered/mailed quantities be less than the ordered quantity by Customer request and the Contract Work have quantity based shared costs that are not to be charged as separate items, the Company will charge 60% of the unit price to recover excess stationery and proportion of set up costs.

## 7. MATERIALS SUPPLIED BY THE CUSTOMER

(a) The Company may reject any paper, plates or other materials supplied or specified by the Customer which appear to him to be unsuitable. Additional cost incurred if materials are found to be unsuitable during production may be charged.

(b) Where materials are so supplied or specified, the Company will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified.

(c) Quantities of materials supplied shall be adequate to cover normal spoilage.

## 8. GUARANTEE AND LIABILITY

(a) The Company agrees to replace or repair at its option goods or parts of goods manufactured by the Company and proved to the Company's satisfaction to be faulty (fair wear and tear or damage due to misuse or operation excepted) provided that such fault be notified to the Company in writing within seven days from the date of completion of the Contract. Any such replacement shall include free delivery to the Customer's works but any parts alleged to be defective shall be returned to the Company by the Customer carriage paid.

(b) The Company's liability for all parts of the goods supplied but not manufactured by them shall be limited to the liability of the manufacturer of such goods to the Company whether or not the extent of the manufacturer's liability is made known to the Customer.

(c) No liability whatsoever is accepted for any direct or indirect costs damages or expenses relating to damage to property or injury or loss to any person, firm or company, or for any loss of profits or production arising out of or occasioned by any defect in or failure of goods, services or materials or parts thereof supplied by the Company.

(d) The Company's liability whether in respect of one claim or in the aggregate arising out of any Contract shall not exceed the purchase price payable under the Contract.

(e) The Customer agrees that apart from the express terms contained herein or in a quotation or in any document expressly stipulated therein to form part of the Contract and to be outside the provisions of this clause, no statement or representation has been made by the Company relating to the goods supplied or if any such statement or representation has been made the Customer warrants that he understands them and that it was a statement or opinion only and did not rely on it.

(f) The guarantee contained in this clause is given by the Company in lieu of the implied conditions contained in Sections 13, 14 and 15 of the Sale of Goods Act 1893 and any other conditions or warranty implied by trade custom or usage. The Customer hereby acknowledges:

(i) that he purchased the goods in a competitive market and that the bargaining strength of the Company was in no way a relevant factor in the purchase of the goods of the Company.

(ii) that he purchased the goods in the course of business and not for private use, and

(iii) that he knows the extent of the meaning of this clause and the limitations thereby imposed by it upon Sections 13, 14 and 15 of the Sale of Goods Act, 1893.

## 9. RISK

All risk in the goods will pass to the Customer immediately on delivery of the goods to the Customer or the Customer's order.

## 10. PRELIMINARY WORK

All work carried out, whether experimentally or otherwise, at the Customer's request shall be charged.

## 11. COPY

A charge may be made to cover any additional work involved where copy supplied is not clear and legible.

## 12. PROOFS AND USE OF PRODUCTS

(a) It is the sole responsibility of the Customer to check all details of any 'Proofs' submitted by the Company. Errors or omissions related thereto are the sole responsibility of the Customer and the Company will be under no liability whatsoever and will proceed with manufacturing once the Customer has approved the 'Proofs' by signature.

(b) Should the Customer cancel the Contract prior to fulfillment of the Contract, the Customer shall pay all costs and expenses incurred up to the date of cancellation.

(c) When style, type or layout is left to the Company's judgement, changes therefrom made by the Customer shall be charged extra.

## 13. ILLEGAL MATTER

(a) The Company shall not be required to print any matter which in his opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.

(b) The Company shall be indemnified by the Customer in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent, design or of any other proprietary or personal rights contained in any material printed for the Customer. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.

## 14. SUB-CONTRACTORS

The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of the Company's obligations under the Contract.

## 15. FORCE MAJEURE

The Company shall be under no liability for any delay, loss or damage caused wholly or in part by any act of God or by any act done or not done pursuant to a trade dispute whether such dispute involves the Company's servants or not.

## 16. LEGAL

The Contract shall be governed and interpreted exclusively according to the law of England.

## 17. RETENTION OF TITLE

The property in any goods supplied by the Company shall remain in the Company until the Customer has paid in full all amounts due to the Company. Throughout the period of such ownership of the Company in terms of the above provisions, the Customer shall hold the goods in a fiduciary capacity on the account of and for the benefit of the Company and, if the Customer shall sell the goods prior to making payment in full, the beneficial entitlement of the Company therein shall attach to the proceeds of such sale or to the claim for such proceeds. So long as the property in goods remains in the Company and the Customer is in default of any obligation hereunder, the Company shall have the right, with or without prior notice to the Customer, to retake possession of the goods and/or any such items equal to the total value of the Contract and for that purpose to go upon any premises occupied by the Customer (without prejudice to any other remedy) and to detach the goods and/or any such items equal to the total value of the Contract from any building in which they may have been incorporated.

## 18. STANDING MATERIAL

Computer CD's DVD's Photography and other materials owned by the Company and used by him in the production shall remain his exclusive property. Such items when supplied by the Customer shall remain the Customer's property.

## 19. CUSTOMER'S PROPERTY

(a) Except in the case of a Customer who is not contracting in the course of a business nor holding himself out as doing so, Customer's property and all property supplied to the Company by or on behalf of the Customer shall while it is in the possession of the Company or in transit to or from the Customer be deemed to be at Customer's risk unless otherwise agreed and the Customer should insure accordingly.

(b) The Company shall be entitled to make a reasonable charge for the storage of any Customer's property left with the Company before receipt of the order or after notification to the Customer of completion of the work.

## 20. BREACH OF CONTRACT

In the event of any breach by the Customer of the Customer's obligations set out in these Conditions or otherwise imposed on the Customer by any Contract with the Company, then, without prejudice to any other claim on the part of the Company, the Customer will pay the Company at the Company's normal rates for all time wasted by the Company as a result of such breach.

## 21. CANCELLATION OF CONTRACT/ORDER

(a) The Company reserves the right to make a 50% charge for Contract/Orders cancelled on and before the copy dead line date.

(b) Any Contract/Order cancelled before standing order/s have been processed, the company will send the customer an invoice for 50% of the original Contract/Order minus monies that have been paid.

(c) Cancellation will not be accepted after the copy dead line.

Cancellations after the copy dead line, the Company will invoice the customer the whole or any outstanding monies owed to the Company by the Customer and any reasonable costs incurred because of the cancellation.

(d) All cancellations must be in the Companies possession in writing before the copy dead line.

## 22. PERIODICAL PUBLICATIONS

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

## 23. CONFIDENTIALITY

Neither party shall either, during the term of a Contract or provision of service under these Terms and Conditions or thereafter, disclose to any person the content of such Contract or any information concerning the business of the other party acquired (whether during the term of such Contract or in any negotiation leading to its signature) by any means or in any way connected with provisions of the service.

This obligation shall not apply:

(i) to information which is public knowledge.

(ii) to information, the disclosure of which is essential to the provision of service and performance of such Contract.

## 24. COPYRIGHT

(a) Any specification or particulars submitted to the Customer in response to any request for quotation or otherwise shall remain the property of the Company as shall the copyright therein and shall be returned to the Company at the conclusion of the Contract or earlier demand.

(b) No such drawing specification or particulars shall be disclosed to any third person save with the Company's written permission.

(c) Copyright on all draft layout, proof, design, drawing, photography or any other visual representation exists in all the Company's works and remains with the Company, even after the Customer has paid the Contract price in full, unless the Customer is in receipt of an official assignment of copyright from the Company in writing. The Customer is prohibited from using the design or any modified version of the design in whole or part to manufacture, produce or procure a printed item and or associated stationery from any company, organisation or individual other than the Company. In the event that the Customer breaches this copyright the Company shall charge the Customer/Publisher reproduction rights on any of this material.