

TERMS AND CONDITIONS OF SALE

CCS MCLAYS LIMITED TERMS AND CONDITIONS OF SALE

1. GENERAL

1.1 In these Terms and Conditions the following apply:

“Artwork” means artwork, copy, designs, documents, drawings, information, materials, proofs, samples, specification or instructions or other such material or otherwise in whatever format necessary for the performance of the contract;

“Blanket Agreement” means an agreement between CCS and you for CCS to provide Products over an agreed period of time, to be stored by CCS until required and called off by you;

“Blanket Order” means any order by you for Products which are the subject of a Blanket Agreement;

“CCS” means CCS McLays Limited, company number 03602069, whose registered office is at Rhymney House Copse Walk, Cardiff Gate International Business Park, Cardiff, Wales, CF23 8RB;

“CCS Stock Management Schedule” means the stock schedule maintained by CCS for your Products;

“Force Majeure” means act of god, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any import or export regulations or embargoes; strikes, lock outs or other industrial actions or trade disputes (whether involving employees of CCS or of a third party); pandemics and epidemics; difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery;

“Indemnity Losses” means all direct, indirect and consequential losses, costs, damages, charges and expenses incurred by CCS on a full indemnity basis;

“IPR” means intellectual property rights (including (without limitation) the copyright, design right or other intellectual property);

“Products” means printed matter, goods, products or material, printing, design, layout, work or other services to be produced or supplied by CCS to you; and

“you” means the customer of CCS who enters into a contract for the purchase of Products from CCS.

1.2 Any remedy, relief, right or action granted to CCS under these Conditions is without prejudice to any other remedy, relief, right or action available to CCS under these Conditions or by law.

1.3 These Conditions apply to all contracts for the sale and purchase of Products between CCS and you to the exclusion of all other terms and conditions including any terms or conditions which you may purport to apply under any purchase order or similar document. Any variation to these Conditions shall be inapplicable unless agreed in writing by a duly authorised

representative of CCS and you. Dispatch or delivery of Products by CCS to you shall be deemed conclusive evidence of your acceptance of these Conditions.

1.4 These Conditions (as varied in accordance with clause 1.3) embody the entire understanding of CCS and you and supersede any prior promises, representations, undertakings or implications.

1.5 All orders for Products shall be deemed to be an offer by you to purchase Products pursuant to these Conditions. Any quotation in whatever form given to you is given subject to these Conditions and does not constitute an offer to sell. These Conditions shall govern the contract whether or not CCS despatches an acknowledgement of order to you.

2. PRICE

2.1 Except as provided in this clause 2.1, the price of Products shall be CCS's quoted price provided you accept it within the validity of the quotation. CCS may by giving notice to you at any time before delivery increase the price to reflect any increase in the cost to CCS which is due to factors occurring after the making of the contract which are beyond its reasonable control (including, without limitation, foreign exchange fluctuations, taxes and duties, labour, material, and other manufacturing costs).

2.2 The price is exclusive of VAT, which shall be due at the rate in force on the date of invoice.

2.3 The price shall include the costs of delivery and packaging unless stated otherwise

3. PAYMENT

3.1 Payment of invoices is due within 30 days of the date of invoice, time being of the essence.

3.2 Interest on overdue payments will be charged at 4% p.a. above Barclays Bank PLC's base rate from time to time applicable (or at the statutory rate if more where proceedings are issued) until the sum due is paid.

3.3 Where any sums are overdue, CCS without any liability to you may withhold any delivery of Products to you and suspend work necessary under its contract until arrangements satisfactory to CCS as to payment or credit have been established.

4. DELIVERY

4.1 Subject to clause 3.3, and provided the delivery place(s) has been agreed by CCS (in default of which delivery shall be made to your principal place of business), delivery shall be made to the place(s) designated by you on your order in such manner as CCS shall decide. Delivery may be made by separate instalments.

4.2 Delivery times are estimates only. CCS will not be liable for any expense, loss or damage sustained by you as a result of early or late delivery.

4.3 You shall make all arrangements necessary to take delivery of Products whenever they are tendered for delivery by CCS, its agents, servants or otherwise delivered up to you or your agent/carrier, in default of which you will reimburse CCS's costs of the aborted delivery service and any redelivery, such costs to be paid forthwith immediately upon details being so provided

by CCS to you and in default of such payment CCS may withhold delivery without any liability to you until such payment is received.

4.4 You will at your expense promptly obtain all necessary import licenses, clearances and other consents necessary for the purchase and delivery of Products.

5. PERFORMANCE

5.1 Subject always to clause 5.2, CCS warrants Products at the time of delivery are free of defects in workmanship and materials and work has been carried out with reasonable care and diligence. If not, and subject to clause 5.2, CCS will at its option either replace Products or re-perform any work, repair or remedy Products as CCS deems appropriate to comply with the warranty or take back Products found not to conform to the warranty and refund the appropriate part of the purchase price. The exercise of any options under this clause shall constitute an entire discharge of CCS's liability under this warranty.

5.2 The warranty in clause 5.1 is conditional upon any breach not being apparent on a reasonable visual examination of Products within 24 hours of delivery and if so notifying CCS in writing within 48 hours of delivery, CCS receiving from you written notice of the alleged defect in Products within 7 days of delivery of Products, you affording CCS a reasonable opportunity to inspect Products and, if so requested by CCS, returning those Products to CCS's premises, carriage pre-paid, for inspection to take place there. If you fail to comply with these conditions Products shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of Products and you shall be deemed to have accepted the Products.

5.3 If Products are lost or stolen prior to risk in them passing to you, CCS can opt to replace Products which shall be an entire discharge of CCS's liability to you in respect of such loss or theft.

5.4 CCS shall be entitled to supply Products within a 10% tolerance level above or below the contracted quantities in which case any variation will be charged or allowance made pro rata at the contract price.

5.5 CCS may alter specifications of Products at any time without notice to you provided it substitutes such Products with other products reasonably deemed by CCS to be similar thereto at the current price of CCS in force at the time of delivery and functionality of the Products is not materially affected.

6. ARTWORK AND MATERIALS

6.1 You shall promptly and within the time stipulated by CCS (time being of the essence), provide the Artwork to CCS and, until such time, CCS will be under no obligation to proceed with work or supply Products.

6.2 CCS has no liability for, or any obligation to notify you of, any errors, omissions, late delivery by you, defects or the unsuitability in or any impracticability of the Artwork as provided by you or CCS and you shall compensate CCS for Indemnity Losses by reason thereof. CCS is under no obligation to return Artwork supplied by you to you.

6.3 Whilst it will endeavour, where appropriate, to provide you with final proof(s) of work prior to production, CCS is under no obligation to do so and may proceed to production in accordance

with the Artwork, if any, provided by you at that time and Products provided will be deemed to satisfy the obligations of CCS hereunder.

6.4 For Products supplied in accordance with Artwork supplied by you or to your design or specification, CCS gives no guarantee or warranty as to the practicability or suitability of those Products.

7. TERMINATION

7.1 If you fail to make payment for Products on the due date or commit any other breach of contract or you offer to make any arrangement with your creditors or any petition in bankruptcy is presented against you or you are unable to pay your debts as they fall due or, being a limited company, any resolution or petition to wind you up (other than for the purchase of amalgamation or reconstruction without insolvency) is passed or presented or a receiver, administrative receiver or manager is appointed over the whole or any part of your business or assets or any petition for the appointment of an administrator is presented against you or you cease or threaten to cease to carry on business or you suffer any analogous proceedings to the above under foreign law or CCS reasonably considers that any of the events mentioned above is about to occur in relation to you and notifies you accordingly, then all sums outstanding in respect of Products shall become payable immediately.

7.2 If clause 7.1 applies, CCS shall be entitled to rescind its contract with you, suspend any further deliveries under the contract without any liability to you and if Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and if any Products have not been delivered CCS may, at its option, sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses incurred by CCS, its agents, servants or otherwise) account to you for the excess over the price under the contract or charge you for any shortfall below the price under the contract; suspend all future deliveries of Products to you and/or terminate the contract without liability upon its part; exercise any of its rights pursuant to clause 10, demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from you, appropriate any payment made by you to such Products (and/or the Products supplied under any other contract between you and CCS) as CCS may think fit (notwithstanding any purported appropriation by you), set off any monies that may be due by CCS to you howsoever incurred against any monies owed by you to CCS under these Conditions, be paid by you Indemnity Losses as a result of termination and charge you interest pursuant to the provisions of clause 3.2.

8. CANCELLATION

8.1 CCS may cancel its contract with you at any time before Products are delivered by giving you written notice whereupon CCS shall promptly repay you any sums paid in respect thereof. CCS shall not be liable for any loss or damage whatever arising from such cancellation.

8.2 You cannot cancel any contract unless CCS agrees in writing in which case you will indemnify CCS against Indemnity Losses as a result thereof except any loss of profit.

9. RISK

The risk in Products shall pass to you upon their delivery to you or your agent/carrier.

10. RETENTION OF TITLE

10.1 Despite delivery and whether risk passes or not, property in Products shall not pass from CCS to you until you have paid CCS's invoices in relation thereto and any other sums due under these Conditions or otherwise ("Settlement"). Nothing in these Conditions shall prevent CCS from claiming payment of its invoices and all Settlement due notwithstanding that the property in the Products may not have passed to you.

10.2 Until Settlement, you shall hold each of the Products on a fiduciary basis as bailee for CCS, you shall store them without interfering, defacing, removing or changing the packaging in which they were delivered to you, you shall not purport to be the owner of the Products and you shall hold in trust for CCS the entire proceeds of sale or otherwise of the Products.

10.3 Until Settlement you shall upon request deliver up any unsold Products to CCS in default of which CCS may enter upon any premises where Products are and repossess them. You shall retain the Products in their original packaging and ensure they are maintained in the condition in which they were delivered to you or your agent/carrier, clearly marked as Products belonging to CCS, which shall be held separately and distinct from any of your other goods. You shall pay to CCS on demand all Indemnity Losses in so repossessing Products and hereby give to CCS an irrevocable licence and permission on your own behalf as well as any third party who may have to give such consent to so enter such premises and exercise such rights.

11. LIEN

11.1 CCS retains a general lien on your equipment, materials, property or assets in CCS's possession for any unpaid monies due by you to CCS or CCS's holding, subsidiary or associated companies, or breach of contract (whether reasonably alleged or actual) or breach of these Conditions (whether damages are ascertainable or not). CCS shall be entitled to sell such equipment, materials, property or assets in the event that payment of all Settlement due is not made in full within 14 days of notice given to you by CCS of its exercise of the lien. CCS may take the proceeds of sale for reimbursement of Indemnity Losses in exercise of the lien and the sale and payment of unpaid monies and shall account for any surplus.

11.2 You may not withhold payment of any invoice or other amount due to CCS by reason of any right of set-off or counterclaim which you may have or allege to have or for any reason whatever.

12. STORAGE

CCS shall be entitled to store Products (or any of them) at your expense at its own premises or elsewhere if either CCS is unable to despatch Products by reason of any act or omission on your part or that of your agent/carrier, or CCS has despatched Products but you or your agent/carrier fail to take delivery thereof or you indicate that you will refuse to take delivery of Products if CCS despatches them or CCS is withholding delivery of Products under these Conditions.

13. IPR AND INDEMNITY

The IPR in Products and Artwork created by CCS, its agents and servants or otherwise or in conjunction with you under a contract with you shall, as between CCS and you, be the property of CCS. For Products supplied in accordance with Artwork supplied by you, you warrant that the use of that Artwork for the manufacture, processing, assembly or supply of Products shall not infringe the IPR of any third party or the provision of any statute, statutory instrument or regulation or that any printed matter is defamatory, in breach of which you will indemnify and keep CCS indemnified against Indemnity Losses.

14. BLANKET AGREEMENTS

14.1 Where CCS supplies Products under a Blanket Agreement, CCS may at any time require you to accept delivery of all Products so ordered within 12 months from the date of the contract for the sale of those Products or the contract completion date (where specified) whichever is later.

14.2 Subject to clause 14.1, you may alter the details of delivery frequency and amounts stated in the CCS Stock Management Schedule by giving CCS at least 4 weeks' notice in writing, provided Products despatched by CCS prior to the expiry of any such notice shall be accepted by you and you pay to CCS any Indemnity Losses as a result of such alteration.

14.3 If any sums payable by you to CCS are overdue, CCS shall immediately be entitled to invoice you for all Products held in stock by CCS under any Blanket Agreement and require you to accept delivery of all such Products which from the date of invoice until delivery shall be stored by CCS at your expense.

14.4 Subject to CCS taking all reasonable steps to rectify any default within a reasonable time for not being able at the time of call-off by you to supply Products to you in accordance with the Blanket Agreement, CCS will not be under any other liability to you for that default.

14.5 For Products subject to call off and invoiced separately for work that has been completed by CCS, such invoices shall become due and payable on agreed terms in their own right notwithstanding that they are part of a Blanket Order.

15. EXCLUSION AND LIMITATION OF LIABILITY

Nothing in these Conditions shall limit CCS' liability for (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; and (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) however, subject to this exclusion, all terms, conditions, warranties and representations express or implied, whether by CCS, its servants, agents or otherwise relating to the quality and/or fitness for purpose of Products are excluded. If CCS breaches the contract with you, your remedies, unless otherwise provided in these Conditions, shall be limited to damages but under no circumstances shall those damages exceed the price paid for Products and in any event CCS shall be under no liability whatever to you for any indirect loss and/or expense (including loss of profit) suffered by you.

16. CONFIDENTIALITY

You and CCS will keep confidential to yourselves all information relating to prices charged and volumes of business conducted between them.

17. GENERAL

17.1 Force Majeure. CCS shall not be under any liability for any default or failure to perform any of its obligations under the contract, and shall have the right to cancel or to reduce the volume of Products delivered if it is prevented from or hindered in delivery of Products, due to Force Majeure.

17.2 Waiver. Failure or delay by CCS in exercising any right, power or privilege under these Conditions shall not in any circumstances preclude any other or further exercise thereof or the exercise of any other right, power or privilege and any waiver by CCS of a breach or default of any terms hereof shall not be deemed a waiver of any subsequent breach or default and shall not affect other terms of these Conditions.

17.3 Severability. If any provision in these Conditions is held by a court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from these Conditions and shall be of no force and effect but these Conditions shall remain in full force and effect as if such provision had not originally been contained in these Conditions.

17.4 Assignment and Factoring. You shall not enter into any agreement with any third party for the factoring of any debts incurred by you to CCS under these Conditions and the contract without the written consent of CCS. Any contract between you and CCS can only be assigned with CCS's express prior written consent (which shall not be unreasonably withheld).

17.5 Notices. Any notice to be given to CCS under these Conditions shall be in writing and served by first class post or by hand to the Managing Director at CCS's registered office or such other address as CCS may from time to time notify to you.

17.6 Headings

The headings to the clauses of these Conditions shall not affect the construction of these Conditions.

17.7 Governing Law

This contract is subject to the laws of England and Wales and all disputes shall be subject to the exclusive jurisdiction of the courts of England and Wales.

17.8 The Contract (Rights of Third Parties) Act 1999

The Contract (Rights of Third Parties) Act 1999 shall not apply to the contract between you and CCS.

Note: CCS McLays' prices and charges are calculated on the basis that the above Conditions will apply. Customers requiring prices to be quoted on a different basis should inform CCS.