

1. Status of Terms & Conditions

1.1 The Company provides direct mail and related services for Clients subject to these terms and conditions only. Any changes or amendments to the Contract will have effect only when agreed or confirmed in writing between the Company and the Client.

1.2 Notwithstanding the provisions of clause the Company may at any time make any changes to these terms and conditions, which are necessary to comply with any applicable or other statutory requirements, which do not materially affect the nature or quality of the direct mail and related services provided that the Company gives written notice to the Client of such changes.

2. Interpretation

2.1 In these terms & conditions:

'Carrier' means the Royal Mail or other carrier nominated by the Company or a carrier otherwise nominated by the Client and agreed in writing by the Company.
'Client' means the person partnership or Company for whom the Company has agreed to provide direct mail and related services.

'Company' means Mailing Guy Ltd whose trading office is at Unit 2 Thurrock Trade Park, Oliver Road, Essex RM20 3ED England.

'Contract' means the contract between the Company and the Client for the provision of direct mail and related services strictly in accordance with these terms and conditions only.

'Services' means direct mail and related services provided by the Company directly or indirectly to the Client.

'Delivery' means Delivery by the Company to the Carrier.

'Materials' means marketing, advertising, promotional fulfilment and other materials.

'Price' means the Price charged by the Company to the Client for the provision of direct mail and related services set out in or determined in accordance with the Contract.

2.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

2.3 In this contract words importing the singular number include also the plural number and where there are two or more parties or persons included in the respective term Client the covenants, warranties or undertakings expressed to be made respectively by the Client shall be deemed to be made by such parties or persons jointly and severally.

3. Estimates, Quotations and the Contract

3.1 A quotation given by the Company is an offer to supply Services to the Client and acceptance of the offer shall be binding on the Company only when accepted in writing by the Client. Any such contract shall be made only on these terms and conditions and shall constitute the entire agreement between the Company and the Client.

3.2 A quotation provided by the Company for the provision of Services is subject to sight by the Company of Materials being suitable for the provision of the Services for which the quotation was provided, if the Materials received by the Company after entering into the Contract are unsuitable the Company reserves the right in its absolute discretion to amend the terms and conditions relating to the Contract including but not limited to amending the Price and any dates relating to Delivery or to terminate the Contract.

3.3 Quotations given to the Client for the provision of Services are valid for thirty days and are exclusive of any VAT for which the Client shall be additionally liable at the applicable rate.

3.4 The Price set out in the quotation is based on a uniform run of the Materials of the quantity requested. Any variation in the quality will give rise to a variation in the Price in accordance with rates set out in the quotation or otherwise as published by or available from the Company.

3.5 Further details about the Company's services and advice or recommendation about its provision or utilisation may be made available on written request.

4. Provision of Materials

4.1.1 The Client shall at its own expense provide the Company with Materials of adequate quality to allow for normal loss and spoilage generally or customarily accepted for the provision of the Mailing Guy Ltd's direct mail and related services. Such supply of specification must be within 5 working days prior to production and of an adequate quantity

4.1.2 Any additional cost incurred thereby shall be charged by the Company to the Client.

4.2 The Client shall be solely responsible for and shall indemnify the Company against any loss or damage resulting from any delay in the Company's receiving any Client's material or from any defect in or unsuitability for the intended purpose of any of the Client's material Failure by the Company to reject any material shall not imply its suitability nor, unless such failure is due to gross negligence, release the Client from liability under this Condition

4.3.1 If the Company has agreed to print any text the Client shall provide such text in a media agreed by the parties. The Client shall ensure and be responsible for the accuracy of such text.

4.3.2 The Company shall have the right but not the obligation to correct any typographical or other errors or omissions in any Materials printed by the Company without any liability to the Client.

4.4 The Company reserves the right in its absolute discretion to reject any materials, including any paper, film, plate printed sheets, signatures and other material provided or specified by the Client which appear in the opinion of the Company to be unsuitable for the provision of direct mail and related services.

5. Proofs

5.1 A proof of any text to be printed by the Company shall be sent to the Client, which the Client shall amend if appropriate, sign, date and return to the Company to confirm approval of the proof. The Client understands and agrees that any unreasonable delay in the return of the proof may result in a delay in Delivery.

5.2 The Company shall send to the Client a first proof of the run of any printing which the Client shall amend if appropriate, sign, date and return to the Company to confirm approval of the proof. The Client understands and agrees that any unreasonable delay in the return of the proof may result in a delay in Delivery.

5.3 If further amendments and proofs are required due to errors made by the Client or a third party or the Client requires further amendments including but not limited to alterations in style type of printing ink or method of packaging the Client will be liable for the costs incurred and the Price shall be amended accordingly. The Company will provide at the Client's expense further proofs for the Client's approval as set out in clauses of 5.1 and 5.2.

5.4 The Client understands and agrees that the Company will not be responsible for any error in a proof which has been approved by the Client and such error shall not entitle the Client to reject all or any of the Materials or to terminate the Contract.

6. Price & Payment

6.1.1 The Client shall pay the Price for the provision of Services strictly as set out in the Contract and the Price on any additional Services performed by the Company which result from amendments to any Materials or their deviation from a format specified by the Company, the Client's instructions or lack of instructions or any other causes attributable to the Client.

6.1.2 If the Client also requires inserts to be packaged the inserts must conform to the Company's machinery requirements and where possible an example of the insert forwarded to the Company for approval. The Company shall be entitled to charge for any additional work incurred by the Company in rearranging sorting cutting folding or otherwise dealing with Client's inserts in order to make them suitable for the Company's machinery and the Company may request the Client to forward immediately a remittance on account of the additional costs to be incurred, the balance, if any, being charged to the Client's account

6.1.3 Should expedited Delivery be agreed and necessitate overtime or other additional cost an extra charge may be made

6.2 The Client acknowledges and agrees that it has no right to set off, abate, deduct or otherwise withhold payment of any sums due to the Company by reason of its dissatisfaction with the Company's performance of its obligations under this Contract and further acknowledges and agrees that it has and will pursue other remedies available to it

6.3 The Client undertakes to pay in advance immediately upon receipt of a demand of the full postage costs of the Carrier. Any failure to do so will result in suspension of the provision of Services until the Company receives such costs.

6.4 The Company shall be entitled to invoice the Client immediately following Delivery of the Materials unless otherwise agreed in writing by the parties.

6.5 If at any time VAT is payable on postage or other Carrier costs the Client

shall pay such VAT immediately on receipt of a demand for payment by or on behalf of the Company.

6.6 If payment of any sum due to the Company is not made on the due date the Company shall be entitled without limiting any other rights it may have to charge interest on the outstanding amount (both before and after judgement) at the rate of 4% per annum above Abbey's base rate from time to time in force

6.7 If payment is not received in the time frame set out on the invoice and still unpaid after a period of 60 days the company has the right to pass the debt over to our collection agent and with this any cost occurred to company the client agrees that it shall be added to the client account.

6.8 The Company may use any outstanding invoice amounts owed to them from supplies/clients to offset any invoice/s should they remain unpaid within our payment terms due to lack of funds available or go into administration.

6.9 The time mentioned for payments due to the Provision of Services is of the essence of this contract.

7. Materials & Storage

7.1 As soon as practical after entering the Contract the parties shall agree a date or dates for the Delivery of the Materials by or on behalf of the Client to the Company. If no date or dates can be agreed the Company shall inform the Client of a Delivery date or dates to enable the Company to perform its obligations set out in the Contract and the Client shall procure Delivery on such date or dates.

7.2 Materials Delivered to the Company's premises prior to the Delivery date or dates set out in Clause 7.1 above will be stored free of charge for a period of up to 7 days and thereafter the Client shall pay the Company a 'pallet per week' rate for storage.

7.3 The Company all at the Client's expense shall return to the Client or its nominee or (if agreed with the Client) dispose of any Materials remaining on the Company's premises following completion of Delivery.

7.4 Where postponement of Delivery is agreed by the parties, the Client shall pay any costs and expenses (including but not limited to the Company's storage charges) incurred by the Company occasioned thereby but the Materials shall be held at the Client's risk as from the date of postponement.

8. Delivery & Completion

8.1.1 The Company shall not be liable for any direct or, indirect loss or damage arising from failure to Deliver or dispatch goods in accordance with the contract or delay in Delivery or dispatch of goods caused by war, strikes, lock outs, fire, flood, explosion, government restriction, failure to obtain or shortages of materials, or by any other cause wholly or partially beyond the Company's control. In the event of any such failure or delay resulting from negligence by the Company or any of its employees the liability of the Company shall not exceed that proportion of the contract Price which is attributable pro rata to the goods so affected. Any greater liability on the Company and all liability whatsoever for consequential loss or damage is hereby agreed to be excluded.

8.1.2 The Company will use its reasonable endeavours to Deliver the Materials to the Carrier on or before the date or dates estimated in the contract but unless the Contract otherwise expressly provides such date or dates shall constitute only statements of expectation and shall not be binding on the Company. The parties understand and agree that the date of Delivery shall not be of the essence of the Contract unless otherwise expressly agreed in writing between the parties.

8.1.3 The Company and the Client shall not be liable for any inability to deliver in accordance with the contract caused by such contingency except insofar as the Unfair Contract Terms Act 1977 or other relevant statute shall provide to the contrary. The Company will notify the Client of any cancellation, delay or variation as soon as is reasonably practicable and will render such assistance, as the Company considers appropriate under the circumstances in order to obtain or affect the whole or partial performance of the contract

8.2 Any unforeseen overtime costs incurred by the Company in seeking to achieve the Delivery dates stated in the Contract shall be paid by the Client.

8.3 The parties understand and agree that the Company does not guarantee that it will Deliver the exact quantity of Materials set out in the Contract or otherwise in accordance with custom and practice and the Company shall be deemed to have complied fully with its obligations under the Contract it shall Deliver a quantity of Materials

constituting plus or minus three per cent. The Price shall reflect Delivered quantities.

8.4 Where Delivery is to be made by instalments each Delivery shall be deemed to constitute a separate enforceable Contract and the Company shall be entitled to issue and be paid on a separate invoice for each such Delivery. Failure to make any one or more Deliveries shall not affect the enforceability of the order as to the remaining Deliveries.

9. Warranties

9.1 The Company warrants to the Client that Services will be provided using reasonable care and skill. Where the Company supplies any Materials in connection with the provision of such services the Company does not give any warranty, guarantee or other term as to their quality fitness for purposes or otherwise but shall where possible assign to the Client the benefit of any warranty, guarantee or indemnity given by the person providing the Materials to the Company.

10. Restriction of Liability

10.1 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Materials which are incomplete or damaged on Delivery to the Company or for instructions supplied by the Client which are incomplete, inaccurate, illegible or ambiguous or arising from the late Delivery or non-arrival of Materials or any other fault of the Client or third party in relation to the provision of the Services.

10.2 Except in respect of death or personal injury caused by the Company's negligence or as expressly provided in these terms and conditions the Company shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty condition of other term or any duty at common law or under the expressed terms of the Contract for any loss of profit or any indirect special or consequential loss, damage, costs, expenses or other claims (whether caused by negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the provision of Services or their use by the Client and the entire liability of the Company under or in connection with the Contract shall not exceed that proportion of the contract Price which is attributable pro rata to the goods or materials so affected (excluding postage charges) against that work or the sum of £20,000 whichever shall be the lesser.

10.3 If without understanding that the Company has used its reasonable endeavours, the Company fails to dispatch or Deliver the Materials to the Carrier or Deliver Materials by such a date or dates set out in the Contract, such failure shall not constitute a breach of the Contract (unless expressly otherwise agreed in writing) and the Client shall not be entitled to rescind or repudiate the Contract or to claim compensation for such failure or for any consequential loss or damage resulting therefrom.

11. Insurance & Risk

The Client shall insure the Materials whilst on the premises of the Company unless expressly otherwise agreed in writing. The Client shall insure the Materials for all risks including but not limited to insurance for fire and theft and accidental loss or damage and risks in transit and the Company shall have no liability for any such loss or damage however caused. All Materials are Delivered to and stored by the Company at the sole risk of the Client.

12. Force Majeure

12.1 If the Company shall be prevented or hindered from providing direct mail and related services or any part of thereof in accordance with the Contract by any circumstances beyond its reasonable control (including without prejudice to the generality of the foregoing fire, flood, civil strife legislation delays in transit shortages or breakdown of plant delay by suppliers, trade disputes and all other causes whether of the foregoing class or not, beyond the reasonable control of the Company) further performance of the Contract shall be suspended for so long as the Company is so prevented or hindered (provided that if the performance of the Contract shall be suspended for more than 28 days, the Client and the Company shall be entitled by notice in writing to the other forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Client shall pay at the Contract rate for all Materials supplied or all work done and Materials used by the Company to the actual date of such termination.)

12.2 The Company shall not have any liability to the Client for any direct or consequential loss or damage suffered by the Client as a result of the Company's inability to perform its obligations under the Contract in the circumstances set out

in clause 12.1. The Company will be entitled to make a reasonable charge for any expenses it incurs following and resulting from such suspension.

13 Illegality & Immorality

13.1 The Company shall not be required to distribute or handle any Materials which in its reasonable opinion may be illegal, indecent or libellous or might infringe any third party rights or cause the Company to incur any criminal or tortious liability and the Client shall indemnify the Company in respect of any claims, costs and expenses whatsoever arising out of such matters.

13.2 The Client warrants that the Material will not infringe the copyright or other rights of any third party and the Client shall indemnify the Company against any losses, damages, costs, expenses or other claims arising from any such infringement.

13.3 The Company shall be under no obligation to examine Materials supplied by the Client as to quality or quantity or as to the accuracy, legality or suitability of any printed matter or logo thereon.

14. Confidentiality

14.1 The Company undertakes to keep safe and confidential all information which is not in the public domain which is given to us by you for the purpose of enabling us to perform the services and also to keep safe and confidential all such information which comes into our hands during the performance of the Services.

15. General Lien

15.1 Without prejudice to other remedies the Company shall in respect of all unpaid debts due from Client have a general lien on all Materials in its possession (whether worked upon or not) and shall be entitled on the expiration of 14 days written notice to dispose of such Materials as it thinks fit and to apply any products towards such debt.

16. Termination

16.1 Either party may at any time terminate the Contract by giving written notice to the other if the other commits any breach of these terms and conditions (if capable of remedy) fails to remedy the breach within 7 days after being required by written notice to do so or if the other goes into liquidation or a receiver is appointed or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or had a receiver or administrator appointed.

17. Direct Mail Accreditation & Recognition Centre (DMA & QMP)

17.1 The Company is recognised by the DMA and therefore has an obligation to uphold at all times in letter and spirit the British Code of Advertising Practice. The Client agrees to comply with the established codes of conduct for the advertising industry including in particular the British Code of Advertising Practice.

18. Subcontracting

18.1 The Company may sub-contract part or all of the provision of Services under the Contract without however affecting its liability to the Client.

19. General

19.1 These terms and conditions constitute the entire Contract between the parties and supersede any previous Contract or understanding or practice and may be varied only as set out herein. All other terms and conditions expressed or implied by statute or otherwise are excluded to the fullest extent permitted by law.

19.2 Any notice invoice or other document which may be given by either party under this Contract shall be deemed to have been duly given if Delivered by hand to or sent by first class pre-paid registered post or facsimile or where the parties expressly agree in writing by electronic mail to the Company at its registered office or to the Client at the Address set out in the Contract.

19.3 No failure or delay by any party in exercising any of its rights under the Contract shall be deemed to be a waiver by either party of any breach of the same or other provision.

19.4 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of those terms and conditions and the remainder of the provision in question shall not be affected.

19.5 English law shall apply to the Contract and the Parties agree to submit to the non-exclusive jurisdiction of the English courts.