

Mailbird Organisation Limited Terms & Conditions

1 INTRODUCTION

These terms and conditions shall apply to any contract between Mailbird Organisation Ltd and the Client (which shall mean the person, firm or company placing any order which is accepted by the mailbird Organisation Ltd) for the supply of goods (including any installment or part of them) and services (including any part of them) which Mailbird Organisation Ltd is to supply or deliver.

These terms and conditions supersede any previous terms and conditions and any practice or course of dealing previously applying between Mailbird Organisation Ltd and the client.

2 QUOTATIONS

A quotation is based on information available to Mailbird Organisation Ltd at the date of the quotation and is subject to sight of materials including data, their suitability and any artwork to be supplied by the Client.

Quotations are valid for a period of 30 days and are for the whole of the goods or services to which the quotation relates. Mailbird Organisation Ltd may extend the period for consideration of its quotation at its discretion and may refuse to accept any order for goods and services, which constitute only a part of the quotation unless the initial specification requested separate quotations for separate elements of the order.

All orders must be in writing. All quotations must be signed off by the client, or relevant purchase order supplied.

3 ORDER, SUPPLY AND DELIVERY OF MATERIALS

3.1 Supply of materials

3.1.1 The client shall be responsible for ensuring that the materials supplied by it or on its behalf.

- (a) conform to specifications in the quotation and Royal Mail requirements;
- (b) are supplied punctually;
- (c) are accompanied by a delivery advice note stating the description of the materials supplied and the quantity (number of pallets, number of boxes per pallet, number of items per box, as appropriate)
- (d) are delivered on pallets, boxed, packed and supplied in such a way as to withstand normal storage and handling;
- (e) are sufficient to enable Mailbird Organisation Ltd to deliver the correct quantity of any printing or reproductive work ordered allowing for normal wastage and spoilage.

3.1.2 Mailbird Organisation Ltd shall use its reasonable endeavours to provide the client with a reasonable estimate of the quantity of printing and reproductive work required.

3.2 Checking materials

Mailbird Organisation Ltd shall count the number of pallets (or boxes if not supplied on pallets) containing materials supplied by or on behalf of the Client against any delivery note and report any discrepancy to the Client. Mailbird Organisation Ltd shall not however be responsible for any loss arising from any errors or omissions in the goods supplied and Mailbird Organisation Limited's signature on Delivery Notes shall not render them liable for any shortfall. Mailbird Organisation Ltd shall not be required to check the contents of pallets (or boxes) supplied by or on behalf of the Client unless this alternative level of checking is agreed and costed in advance.

3.3 Insurance of materials

All materials supplied by or on behalf of the Client are at the Client's risk and the Client is responsible for arranging ade-

quate insurance cover for those materials unless arrangements have been made to the contrary.

3.4 Storage of materials

Materials for mailing may be stored free of charge for 2 weeks prior to the commencement of any order and for 2 weeks after the completion of any order. Once 2 weeks from the completion of any order has elapsed any of the Client's materials relating to that order remaining in Mailbird Organisation Ltd's possession may be subject to storage charges.

Mailbird Organisation Ltd reserves the right, upon giving 14 days written notice to the client, to destroy or dispose of, at the Client's expense any materials remaining after the 2 week period following the completion of the order (contract) has elapsed.

3.5 Physical delivery of materials

The cost of collection and delivery of the Client's goods or materials is not included within the quotation where this is carried out by Mailbird Organisation Ltd for the Client it will be charged for as an extra.

4 DELIVERY OF ORDERS AND COMPLETION OF CONTRACT

While every effort is made to execute orders within the time quoted, time shall not be deemed to be of the essence of the Contract nor can any responsibility be accepted for failure to complete an order by an agreed date and all liability so arising is expressly excluded. If it is agreed that time is of the essence this must be the subject of a separate contract.

5 FORCE MAJEURE

Mailbird Organisation Ltd shall be under no liability if it shall be unable to carry out any of the provisions of the contract for any reason beyond its control including (without limiting the foregoing) Act of God; legislation; war; fire; flood; drought; failure of power supply; lock out; strikes or other action in contemplation of the furtherance of a dispute, riot, postal delays.

During the continuance of a situation of "Force Majeure" the client may be written notice terminate the contract and pay for any work done and material used, but subject to this shall otherwise accept delivery when available.

6 CONFIDENTIALITY AND DATA PROTECTION

The processing of personal data

Mailbird Organisation Ltd represents, warrants and undertakes to the Client that it shall process any personal data (as defined in the data protection act 1998) solely for the purposes of fulfilling the contract, and that it has in place, to the best of its ability, appropriate technical and organisational measures against accidental or unlawful destruction or loss of alteration to, unauthorised disclosure of or unauthorised access to any personal data.

Upon the completion or termination of the contract the Client shall provide instructions for the return or destruction of personal data.

7 CHARGES AND PAYMENT

7.1 Payment of invoices

Invoices will be paid on completion of contract and in any event at not less than monthly intervals within 30 days of the invoice date unless otherwise agreed. Where the execution of an order extends over a period exceeding one calendar month we may upon written request agree at our absolute discretion to invoice at the end of each month for payment in respect of work carried out during that month or negotiate progress payments all such payments to be due and payable forthwith.

All prices quoted are strictly net and are exclusive of VAT which should be payable by the Client.

The Client shall also be charged for any preliminary work produced by Mailbird Organisation Ltd at the client's request whether experimentally or otherwise and any corrections made after the first proof and any other charges requested by the Client on or after the first proof.

7.2 Payment for postage

Where the mailing is to be undertaken through Mailbird Organisation Ltd's own postal account, the cost of postage shall be paid no more than 48 hours before the mailing begins. If the cost of postage is not paid within the specified time limit Mailbird Organisation Ltd shall have the right to withhold the mailing.

Where the final cost of postage is less than the amount paid due to a postage discount or otherwise Mailbird Organisation Ltd may offset any sums remaining after all postage costs have been paid for against any sums due from the Client.

7.3 Interest on overdue bills

Mailbird organisation Ltd reserves the right to charge interest at the rate of 2% per month or part thereof on any overdue sums from the date on which payment was due (which shall mean 30 days after the date of any invoice) to the date on which payment is received.

8 CODES OF PRACTICE AND INDEMNITIES

The Client shall:

- (a) provide a true copy of all advertising material or other material intended to be enclosed with any material prepared by Mailbird Organisation Ltd;
- (b) ensure that all information or materials provided by it complies with all applicable statutory requirements and with the codes of practice of the appropriate supervisory bodies including, but not limited to, the British Codes of Advertising and sales Promotion (BCASP); and the Direct Marketing Association's Code of Practice;

The Client shall indemnify Mailbird Organisation Ltd against all costs, claims, liabilities, penalties and expenses which may be incurred by reason of its' works being legal, unlawful, infringing and copyright, trademark or other intellectual or other property rights of any third party or is defamatory, obscene or the distribution of which may infringe postal or other regulations or which is in breach of any trade description or other legislation.

Mailbird Organisation Ltd shall have the right upon request from the body administering the Quality Standard in Mail Production (QMP) or any successor accreditation scheme, to supply that body with samples of any mailings relating to the contract.

9 PROVISION OF COMPUTER DATA

The Client shall ensure that any computer data supplied to Mailbird Organisation Ltd is clean, unadulterated, capable of being read and processed and does not contain any computer viruses. In the event of the computer data supplied being corrupt, Mailbird Organisation Ltd shall either require the Client to supply clean unadulterated data which does not contain any computer viruses or decontaminate the data itself but at the Client's expense.

Where the Client supplied his own list of names and addresses no responsibility can be accepted for their accuracy or for any errors or omissions or for any loss or damage consequential upon their use.

The Client shall ensure that all data supplied are completely

unambiguous with regard to their format. A specification of the formats of the data supplied and instructions for interpretation must be provided in writing.

10 LIABILITY

10.1 Limitation of liability

Mailbird Organisation Ltd's entire liability (including liability for acts and omissions of its employees, agents and sub contractors) in respect of any breach of its contractual obligations and of any representations, statement or tortious act or omission including negligence shall be limited to the contract price (excluding postage costs).

10.2 Consequential or indirect loss

Mailbird Organisation Ltd shall not be liable for any indirect or consequential loss or damage, loss of profits or goodwill or loss of any kind, other than the direct loss suffered by the client and subject to limitation under the above sub clause.

11 TERMINATION AND CANCELLATION

Either party shall be entitled to terminate this contract by notice in writing to the other in the event of any material breach by the other party of any obligations under this contract. The termination will take effect 14 days after receipt of written notice unless the defaulting party has remedied the default within this time.

Mailbird Organisations Ltd shall be entitled to terminate this contract by notice in writing in the event of the Client's failure to pay in accordance with the terms of the contract or in the event of the Client committing an act of bankruptcy or taking any steps leading to a liquidation, making any agreement with its creditors or having a receiver or administrative receiver appointed over any of its assets.

In the event of termination by Mailbird Organisation Ltd under this clause, the Client shall immediately pay any outstanding sums due from it to Mailbird Organisation Ltd.

12 AGENCY, PARTNERSHIP AND JOINT VENTURES

Nothing in this contract shall be construed as to constitute either Mailbird Organisation Ltd or the Client to be the agent of the other and it shall not operate so as to create a partnership or joint venture of any kind between them.

13 ENFORCEABILITY

No failure or delay by either Mailbird Organisation Ltd or the Client in exercising any of their rights under these terms and conditions shall be deemed to be a waiver of those rights. No waiver by either of them on any breach of the contract by the other, shall be considered as a waiver of any subsequent breach of the same or any other provision.

14 SEVERABILITY

Notwithstanding that any provisions of these terms and conditions may prove to be illegal or unenforceable the remaining provisions shall continue in full force and effect.

15 ENTIRE AGREEMENT

These terms and conditions constitute the entire contract between Mailbird Organisations Ltd and the Client with respect to the matters dealt with herein. No variation to this contract shall be valid of effective unless made in writing and signed by both of them.

16 JURISDICTION

These terms and conditions and the contract of which they form part are subject to English Law and Mailbird Organisation Ltd and the Client agree to submit to the jurisdiction of the English courts in respect of any dispute of difference arising under it.