

Terms and Conditions of Sale

1. Introduction

These terms and conditions shall apply to any contract between Advanced Mailing Solutions Ltd ("the Company") and the Client (which shall mean the person, firm or company placing any order which is accepted by the Company) for the supply of goods (including any instalment or part of them) and services (including any part of them) which the Company are to supply or deliver.

These terms and conditions supersede any previous terms and conditions and any practice or course of dealing previously applying between the Company and the Client.

2. Quotations

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

Quotations are valid for a period of 30 calendar days and are for the whole of the goods or services to which the quotation relates. The Company may extend the period for consideration of the quotation at the Company's 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. No contract shall exist between the Company and the Client where the Company rejects the order.

3. Order, Supply and Delivery of Materials

3.1.1 The Client shall be responsible for ensuring that the materials supplied by it or on its behalf to the Company:

- (a) conform to specifications in the quotation and Royal Mail's, or any other carrier's as appropriate, requirements;
- (b) are supplied punctually;
- (c) are accompanied by a delivery advice note stating the quantity and description of the materials supplied;
- (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 the Company to deliver the correct quantity of any printing or reproductive work ordered allowing for normal wastage and spoilage.

3.1.2 If requested, the Company shall use its reasonable endeavours to provide the Client with a reasonable estimate of the quantity of printing or reproductive work required.

3.2 Checking materials

The Company shall count the number of pallets containing materials supplied by or on behalf of the Client against any delivery note and shall immediately report any discrepancy to the Client. The Company shall not however be responsible for any loss arising from any errors or omissions in the goods supplied.

The Company shall not be required to check the contents of pallets supplied by or on behalf of the Client.

3.3 Insurance of materials

All materials supplied by or on behalf of the Client are at the Client's risk whilst on the Company's premises or in transit to such premises and the Client is responsible for arranging adequate insurance cover for those materials unless arrangements have been made to the contrary.

3.4 Storage of materials

Any of the Client's materials which remain in the Company's possession after 14 calendar days from the completion of any order will be subject to storage charges. The Company reserves the right to destroy or dispose of all such materials at the Client's cost not less than 14 calendar days after written notice to that effect is given to the Client.

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 and where this is carried out by the Company for the Client it will be charged for as an extra.

4 Delivery of orders

The specified time for delivery, which shall be of the essence, shall be subject to receipt by the Company of all information and materials to enable it to proceed with the contract and to comply with any applicable governmental or other consent.

5 Force of Majeure

The Company 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 (but not strikes or other action in contemplation of the furtherance of a dispute taken by the Company's employees).

If the 'Force Majeure' situation continues for a period of 5 calendar days then the Client may by written notice to the Company terminate the contract upon 5 calendar days notice and pay for work done and materials used, but subject to this shall otherwise accept delivery when available.

6 Data Protection

6.1 The processing of personal data

The Company represents, warrants and undertakes to the Client that it shall process any personal data (as defined in the Data Protection Act 1998), only on the instructions of the client, solely for the purposes of this contract and for no other purpose.

The Company represents, warrants and undertakes to the Client that it has in place 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.

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The Company shall ensure that each of its employees, agents and subcontractors are made aware of its' obligations with regard to the security and protection of personal data and shall require that they enter into binding obligations reflecting the provisions of this clause.

The Company shall ensure that each of its employees has signed a confidentiality agreement in respect of its clients' data.

6.2 Auditing of security measures

The Company shall, when requested to do so by the Client, submit its data processing facilities, data files and relevant documentation to auditing by the Client, subject to the Company's security and confidentiality procedures and shall comply with all reasonable requests from the Client to enable it to comply with any and all of its' obligations under the Act.

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

7 Intellectual Property

The intellectual property rights in any work created by or for the Company in relation to this contract shall vest in the Company unless it is agreed in writing that such intellectual property rights shall pass to the Client.

8 Charges and Payment

8.1 Payment of invoices

Invoices will be paid on completion of the contract and in any event at not less than monthly intervals within 30 days of the invoice date unless otherwise agreed.

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

The Company reserves the right to vary any credit terms at its sole discretion and without notification.

The Client is liable to be charged for any preliminary work produced by the Company at the Client's request whether experimentally or otherwise and any corrections made after the first proof and any other changes requested by the Client on or after the first proof.

8.2 Payment for postage

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

8.3 Postal charge refunds

Where the cost of postage is less than the amount paid by the Client, the Company shall either refund any sums remaining to the Client or shall provide a credit for the Client for the next mailing it puts through the Company's account.

8.4 Interest on overdue bills

The Company reserves the right to charge interest at the rate of 4% above the base rate of Bank of Scotland or part thereof on any overdue sums from the date on which payment was due (which shall mean 30 calendar days after the date of any invoice) to the date on which payment is received.

9 Codes of Practice and Indemnities

The Client shall:

(a) provide the Company with a true copy of all advertising material or other material intended to be enclosed with any material prepared by the Company;

(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, Sales Promotion and Direct Marketing (Cap code); and the Direct Marketing Association's Code of Practice;

(c) ensure that any consumer mailing addresses provided to the Company are cleaned against the Mailing Preference Service (MPS) files, unless it is agreed that this will be carried out by the Company.

The Client shall indemnify the Company against all costs, claims, liabilities, penalties and expenses which the Company may incur by reason of its' works being illegal, unlawful, infringing any copyright, trademark or other intellectual or other proprietary 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.

The Company 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.

10 Provision of Computer Data

The Client shall ensure that any computer data supplied to the Company 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, the Company 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.

The Client shall ensure that all data supplied to the Customer 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.

11 Liability

11.1 Limitation of Company's liability

The Company'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 delictual act or omission including negligence shall be limited to the contract price (excluding postage and telecommunications costs).

11.2 Consequential or indirect loss

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The Company 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 sub clause 11.1.

11.3 Liability for death or personal injury

Notwithstanding the sub clauses 11.1 and 11.2 above, the Company's liability to the Client for death or injury resulting from its own or that of its employees, agents or sub contractors negligence shall be unlimited.

12 Termination and Cancellation

12.1 Termination in the event of breach of contract by either party or upon the bankruptcy, liquidation etc of the Client

Subject to clause 12.2 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 of its obligations under this contract. The termination will take effect 14 calendar days after receipt of written notice unless the defaulting party has remedied the default within this time.

The Company 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 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 the Company under this clause, the Client shall immediately pay any outstanding sums due from it to the Company.

12.2 Termination in other circumstances

If either the Company or the Client wishes to cancel the contract (other than for a breach of the contract by the other and the instances arising under clause 12.1) then:

a) where the Client cancels the contract it will pay to the Company a reasonable sum for any work carried out by it prior to such cancellation together with a reasonable profit on the uncompleted portion of the contract;

(b) where the Company cancels the contract it will pay to the Client all irrecoverable costs incurred by the Client relating to that contract.

Termination of the contract by cancellation in 12.2 (a) & (b) above will take effect immediately upon receipt of written notice from the cancelling party to the other party.

13 Agency, Partnership and Joint Venture

Nothing in this contract shall be construed as to constitute either the Company 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.

14 Enforceability

No failure or delay by either the Company or the Client in exercising any of their rights under this

contract shall be deemed to be a waiver of those rights. No waiver by either of them of 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.

15 Severability

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

16 Entire Agreement

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

17 Jurisdiction

This contract is subject to Scottish law and the Company and the Client agree to submit to the jurisdiction of the Scottish courts in respect of any dispute or difference arising under it.