

Terms and conditions applicable to Printing Contracts Conditions of Sale



1. INTERPRETATION

1.1 In these Conditions:

"Company" means Warners (Midlands) Plc;

"Conditions" means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company;

"Contract" means the contract made between the Customer and the Company for the Products and/or Services which will be subject to the Conditions;

"Customer" means the person who accepts a quotation of the Company for the printing of Products;

"Price" means the price payable under the Contract by the Customer in accordance with clause 4 of these conditions;

"Products" means the publications (including any instalment of the publications) which the Company is to print pursuant to the Contract;

"Services" means the services which the Company is to carry out pursuant to the Contract;

"Writing" means in writing, including telex, cable facsimile transmissions email and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience of reference only and shall not affect their interpretation.

1.4 References to person(s) include an individual, company, corporation, firm or partnership.

2. CANCELLATION

2.1 These Conditions shall apply to the Contract at all times and shall be binding upon the parties unless otherwise and subsequently agreed in writing between authorised representatives of both parties.

2.2 The Company's employees or agents are not authorised to make any representations concerning the Products and/or Services unless confirmed by the Company in Writing. In entering into any such representations which are not so confirmed, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed. Notwithstanding any provision to the contrary, the Company does not limit or exclude its liability for fraudulent misrepresentations.

2.3 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company (other than a document created by the Company specifically for a Customer pursuant to the Contract) shall be subject to correction without any liability on the part of the Company.

2.5 In respect of a Contract for printing of periodical publications only, either party may terminate the Contract upon the following notice periods:-

Nature of Publication	Length of notice (given at any time)
Weekly, Fortnightly, Monthly	13 weeks
Quarterly and Bi Monthly	26 weeks

In respect of Clause 2.5, notice may be given at any time and must be made in Writing. The printing of each periodical shall not constitute a separate Contract although the Company reserves the right to charge the Customer an appropriate proportion of the Contract price upon completion of the printing of each issue of the publication and the terms of Clause 5 of these Conditions shall equally apply to Contracts relating to periodical publications as the same applies to any other Product Or Services.

3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.

3.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Products within sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3 The quantity, quality, description and specification of the Products shall be those set out in the quotation or order acknowledgement form issued by the Company, unless subsequently varied in accordance with Clause 2.1 of these Conditions. In the event of any conflict between the quotation and the order acknowledgement form, issued by the Company, the provisions of the order acknowledgement form shall prevail.

3.4 The Company reserves the right to make any changes in the specification of the Products which are required to conform with any applicable safety or other statutory requirements or, where the Products are to be supplied to the Company's specification, which do not materially affect their quality or performance.

3.5 The Customer acknowledges that any specifications made under the Contract in relation to the paper and/or the print colours to be used in the Products are for guidance purposes only and agrees that where, for whatever reason, the Company is unable to produce the Products in accordance with such specifications it shall be authorised by the Customer to produce the Products to such specifications that are as similar to the original specifications as is reasonably practicable.

3.6 If, as a consequence of any alterations to the specifications of the Products in accordance with clause 3.5 above, the cost of the materials used by the Company is lower than the cost of the materials detailed within the original specifications then the Company shall account to the Customer for such a difference in cost and the price shall be reduced accordingly. For the avoidance of doubt, if the cost of the materials is greater than that in the original specification, this shall be at the Company's expense and there shall be no increase in the Price.

3.7 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4. CONTRACT PRICE

4.1 The Contract Price shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of the order acknowledgement form issued by the Company to the Customer.

4.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the Contract price to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the costs of labour, materials or other costs of printing), any change in delivery dates, quantities or specifications for the Products which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

4.3 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

- 4.4 The cost of pallets and returnable containers (collectively referred to as the "Containers") will be charged to the Customer in addition to the price of the Products, but full credit for the Containers will be given to the Customer provided they are returned undamaged to the Company before the due payment date.
- 4.5 The cost of all preliminary work carried out by the Company to enable it to perform its obligations under the Contract shall be borne by the Customer and the Company reserves the right to invoice the Customer separately for such preparatory work.
- 4.6 Without prejudice to the generality of the foregoing Clause 4.5, the reasonable cost of any prototyping, drafting or experimental work carried out by the Company at the request of the Customer shall be borne by the Customer and the Company reserves the right to invoice the Customer separately for such work.
- 4.7 The Company reserves the right to separately invoice the Customer for reasonable costs incurred by the Company in the application of any applicable processes to any copy supplied by the Customer that the Company reasonably believes necessary to enable it to substantially perform its obligations under the Contract.
- 4.8 Unless otherwise agreed in writing between the parties, the price quoted by the Company shall not include the cost of delivery of the products. The Company therefore reserves the right to levy an additional charge to the Customer in respect of delivery, the cost of which may vary depending upon the location to which the products are to be delivered.
- 4.9 The Company reserves the right to charge additional delivery costs to the Customer in the event of expedited delivery being required.
- 4.10 The Company reserves the right to separately invoice the Customer for reasonable costs incurred in storing any Customer's property received prior to or during the Contract or remaining at the Company premises upon completion of the Contract.

5. TERMS OF PAYMENT

Subject to any special terms agreed in Writing between the Company and the Customer, the following terms of payment shall apply:-

- 5.1 The Customer shall pay all amounts stipulated on the Company's invoice in relation to the Contract, within 30 days of the date of the Company's invoice ("the Due Date"), notwithstanding that delivery may not have taken place and the title in the Products has not passed to the Customer. The time of payment of the invoice amount shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.2 If the Customer fails to make any payment on the Due Date, then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- cancel the Contract or suspend any further deliveries to the Customer;
 - appropriate any payment made by the Customer, to such of the Products (or the products supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported or actual appropriation by the Customer); and
 - charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per cent per annum above Barclays Bank base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. DELIVERY

- 6.1 Delivery of the Products shall be made by the Customer collecting the Products at the Company's premises at any time after the Company has notified the Customer that the Products are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Products to that place.
- 6.2 Any dates quoted for delivery of the Products are approximate only and the Company shall not be liable for any delay in delivery of the Products howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in Writing. The Products may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 6.3 If the Customer fails to take delivery of the Products or fails to give the Company adequate delivery instructions at the time stated for delivery, then without prejudice to any other rights or remedies available to the Company, the Company may:
- store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - sell the Products and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price of the Contract which the Company has realised as a result of such sale.

7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Products shall pass to the Customer:
- in the case of Products to be collected from the Company's premises, at the time when the Company notifies the Customer that the Products are available for collection; or
 - in the case of Products to be delivered away from the Company's premises, at the time when the Company has delivered, or in the case of the Customer refusing to accept delivery, attempted to deliver the Products.
- 7.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, the title in the Products shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Products, Services and all other charges for which payment is then due to the Company from the Customer.
- 7.3 Until such time as the title in the Products passes to the Customer (and provided the Products are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Products to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products. The Customer agrees to grant and procure all such licences as are required to enable the Company to effect its rights under this Clause.
- 7.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 7.5 In the event that the Customer requires items or services to be produced or undertaken in accordance with its own designs or processes then any material, drawings or documents or other items provided by the Customer to the Company to enable the Company to undertake its obligations under the Contract, shall remain the property of the Customer. The Customer agrees to insure all such items against all applicable risks whilst in the custody (to include whilst in transit) of the Company. The Company shall return the items to the Customer or make them available for collection by the Customer at the same time that the products are either delivered or made available for collection. If the items are damaged or lost whilst in the Company's possession, then the Customer agrees to claim under the Customer's insurance policy for any losses which arise as a consequence of this, and the Customer agrees to waive any rights or claims which it has against the Company with respect to the loss or damage.

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PRINTERS OF MAGAZINES, JOURNALS, BROCHURES AND CATALOGUES

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8. PRINT QUALITY AND QUANTITY

- 8.1 Unless otherwise agreed in writing between the parties, the Customer shall be responsible for providing the Company at the commencement of the Contract with copy in an appropriate format.
- 8.2 Whether or not the Customer provides copy to the Company, the Company shall, unless otherwise agreed in Writing between the parties, prior to proceeding to print, prepare an appropriate number of proofs and shall submit them to the Customer to be approved within a reasonable time period stipulated by the Company.
- 8.3 Upon receipt of the proofs from the Company, the Customer will be responsible for advising the Company in Writing within 7 days of receipt of the proofs as to their acceptability. TIME FOR COMMUNICATING ACCEPTABILITY SHALL BE OF THE ESSENCE IN THE CONTRACT, AND FAILURE BY THE CUSTOMER TO ACT IN ACCORDANCE WITH ITS OBLIGATIONS CONTAINED IN THIS CLAUSE SHALL CONSTITUTE DEEMED ACCEPTANCE OF THE PROOFS AS SUBMITTED BY THE COMPANY. THE COMPANY SHALL THEREAFTER ONLY BE REQUIRED TO PRINT THE PRODUCTS TO SUBSTANTIALLY MATCH THE QUALITY OF THE PROOFS SUBMITTED AND THE CUSTOMER SHALL HAVE NO CLAIM WHATSOEVER AGAINST THE COMPANY FOR ANY LOSSES EITHER DIRECTLY OR INDIRECTLY ARISING OR OF A CONSEQUENTIAL NATURE IN THE EVENT THAT IT CONSIDERS THE FINAL PRODUCTS TO BE UNSATISFACTORY FOR THE USE TO WHICH THE PRODUCTS WERE INTENDED TO BE PUT.
- 8.4 If the Customer informs the Company within the stipulated time period of its decision in respect of the acceptability of the proof submitted, then in the event of reasonable amendments to proof being required by the Customer, the Company shall thereafter provide a reasonable number of further proofs upon the terms as contained in Clause 8.3 of these Conditions until the proofs are approved or deemed to be approved (pursuant to Clause 8.3) by the Customer, such approval not to be unreasonably withheld. The Company shall not, however, in the event of re-submission of proofs, be liable for any losses arising of whatever nature in respect of any delay that may be caused to its subsequent obligations under the Contract as a result of this.
- 8.5 The Customer hereby acknowledges that any proofs provided to and approved by the Customer may differ from the final products provided due to a variation in the specifications of the product in accordance with clause 3.5 above.
- 8.6 If the Customer fails to comply with its obligations and notifications as stipulated in Clause 8.3 of these Conditions then the Company may at its absolute discretion carry out whatever processes it considers necessary to enhance the quality of the proof, and shall be entitled to charge the Customer for all reasonable work undertaken and materials applied in its attempts to enhance the quality of the proof even if all such reasonable attempts prove unsuccessful.
- 8.7 No provision of Clause 8.5 shall be deemed to place an obligation upon the Company to produce proof of a higher quality than that originally submitted to the Customer.
- 8.8 In the event that the Customer waives its right to production of proof by the Company prior to proceeding to print, the Company shall use reasonable endeavours to ensure that the printed product is of a reasonable quality and fit for the purpose and market (if communicated to it by the Customer) for which the Customer intended it to be used. Provided the Company has used reasonable endeavours then it shall not, however, be liable to the Customer for any direct, indirect or consequential loss or damage (whether by loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever or howsoever arising in the event that the products printed by the Company are considered unsatisfactory for use by the Customer.
- 8.9 The Company reserves the right to deliver or make available the following reasonable percentage more or reasonable percentage less than the quantities ordered (whereupon there shall be an adjustment in the price, so that the Contract rate for each unit which is charged for, is the actual quantity delivered or made available):
- Subject to clause 8.9(c) in respect of work in one colour only, plus or minus 5%;
 - Subject to clause 8.8c in respect of others, plus or minus 10% allowed for overs or shortages.
 - In respect of quantities exceeding 60,000 units, plus or minus 8%

9. WARRANTIES AND LIABILITY

- 9.1 Subject to the provisions contained within the Conditions, the Company warrants that the Products will substantially correspond with final proof at either the time of delivery or at the time at which the Products are made available to the Customer.
- 9.2 The Company shall be under no liability in respect of any defect arising in the Product from fair wear and tear.
- 9.3 Subject as expressly provided in these Conditions, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1994) all warranties, conditions or other terms implied by statute, conduct, a course of dealings, common law or otherwise are excluded from the Contract to the fullest extent permitted by law.
- 9.4 Any claim by the Customer which is based on any defect in the quality or condition of the Products or their failure to correspond with proof shall (whether or not delivery is refused by the Customer) be notified to the Company: on the date of delivery or the date on which the Products were made available to the Customer; or alternatively, where the defect or failure was not apparent on reasonable inspection, within 2 days from the date of delivery or 2 days from the date when the Products were made available to the Customer.
- 9.5 Any claim by the Customer which is based on loss or damage in transit or based upon non-delivery must be notified to the Company within 2 days of delivery or in the case of non-delivery within 2 days of expected delivery.
- 9.6 Where any valid claim in respect of any of the Products which is based on any defect in the quality or condition of the Products or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to reprint the Products or the part in question free of charge or, at the Company's sole discretion, refund to the Customer the Contract price of the Products (or a proportionate part of the price) but the Company shall have no further liability to the Customer, whether under contract, tort (including but not limited to negligence) or otherwise.
- 9.7 The Company expressly excludes its liability under the Contract for indirect, special, incidental or consequential loss or damage, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 9.8 Notwithstanding any provision to the contrary, the Company does not limit or exclude its liability for death or personal injury to the extent only that the same arises as a result of the negligence of the Company, its employees, agents or authorised representatives. The Company does not limit or exclude its liability for fraudulent misrepresentations.
- 9.9 Subject to Clause 9.8, the Company's aggregate liability to the Customer under or in connection with the Contract for any costs, claims, expenses, damages (whether arising in contract, tort (including but not limited to negligence) or otherwise) is limited, to the Contract price or the insurance cover which the Company has for the respective liability, whichever is the greater.
- 9.10 In the event that the Company is found liable for any physical property damage, the Company's liability for each claim shall in no event exceed the insurance cover which the Company has available in respect of such physical damage.
- 9.11 Details of the Company's insurance cover in respect of any physical property damaged are available on request from time to time (including before entering into the Contract) for the Customer to satisfy itself that the Company's limitations of liability are reasonable for its purposes.
- 9.12 It should be noted that the liability which the Company assumes pursuant to these Conditions, is subject to the fact that where any one event or series of two or more connected events gives rise to more than one claim, that limit shall apply to all such claims as though they were a single claim.

- 9.13 The price of the Products and Services has been calculated on the basis that the Company will exclude and limit its liability as set out in these Conditions and the Customer by placing an order agrees and warrants that: the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in these Conditions; and the Company shall have no further liability to the Customer.
- 9.14 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Products and/or Services if the delay or failure was due to any cause beyond the Company's reasonable control. The Company shall in such circumstances be entitled at its option (to be notified in Writing by the Company to the Customer) either to cancel any Contract to which these Conditions apply, or, without any liability to the Customer, to extend the time or times for delivery or otherwise performing its obligations under the Contract by a period at least equivalent to that during which such delivery or performance has been prevented or delayed by any such cause. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 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 governmental, parliamentary or local authority;
 - import or export regulations or embargoes;
 - strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
 - difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - power failure or breakdown in machinery;
 - defaults of suppliers or subcontractors to the Company.
- 9.15 The Company shall not be liable to the Customer in respect of any loss howsoever arising due to loss of or damage to any Customer's property held by the Company during the Contract term.

10. INDEMNITY

- 10.1 The Customer acknowledges that the Company places particular reliance upon the provisions of these Conditions and in addition to any other remedy available to the Company, the Customer irrevocably and unconditionally agrees to indemnify the Company and its employees and agents in full and on demand and keep them so indemnified from and against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including legal and other professional advisers' fees and all economic loss whether direct or indirect (including loss of profit, future revenue, reputation or goodwill and anticipated savings)) which are made or brought against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the entering into of this Contract and this indemnity shall cover all consequential and indirect losses suffered by the Company and its employees and agents and they shall have no duty to mitigate any such loss:
- the provision of the Products and/or Services by the Company in accordance with the Customer's designs, drawings, specifications or other data or information furnished or instructions given by the Customer;
 - where Products and/or Services are provided by the Company in accordance with the Customer's designs, drawings, specifications or other data or information furnished or instructions given by the Customer, any claims that any patent, trade mark, design, copyright, design right, confidential information or other intellectual property or other exclusive right of any third party has been infringed through the provision of the Products and/or Services;
 - any breach(es) by the Customer of its obligations under the Contract;
 - any breach(es) by the Company of its obligations under the Contract or
 - any other act or omission (including, without limitation, negligence) of the Company, its employees and agents in excess of the liability assumed by the Company under the Contract; and/or any claim(s) that the Products which the Company has produced for the Customer in accordance with the Customer's instructions contain illegal or defamatory material.

11. INSOLVENCY OF CUSTOMER

- 11.1 This clause applies if:
- the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer, or
 - the Customer ceases, or threatens to cease, to carry on business; or
 - the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.2 Clause 11.1 applies, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the 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.
- 12 Without prejudice to Clause 10, the Company shall not be required to print any material which in its opinion is or may be of an illegal or private nature or an infringement of the proprietary or other rights of any third party.

13. GENERAL

- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing, addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified.
- 13.2 The rights and remedies of the Company in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by the Company to the Customer, nor by any failure of, or delay by the Company in ascertaining or exercising any such rights or remedies. Any waiver of any breach of the Contract by the Company can only be made in writing. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions in these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.4 Both parties hereby irrevocably agree to submit to the exclusive jurisdiction of the English Courts.
- 13.5 The Contract shall be governed by and construed in all respects in accordance with the laws of England.
- 13.6 No person who is not a party to the Contract (including without limitation any employee, officer, agent, representative or sub-contractor of either party) shall have a right to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this Clause 13.6.
- 13.7 Even if a person who is not a party to the Contract (including without limitation, any employee, officer, agent representative or sub-contractor of either party) has a right to enforce any term of the Contract by virtue of any law, the parties may vary or cancel the Contract by agreement between them without requiring the consent of such third party.