

YRG ECLIPSE LIMITED
Terms and Conditions of Business

1 Introduction

- 1.1 These are the terms and conditions on which YRG Eclipse Limited (**We or Us**) will do business with the Customer (**You**). **Please read them carefully, particularly clause 4 (which sets out your obligations) and clause 14 (which limits Our liability).**
- 1.2 In these terms and conditions certain words and phrases have special meanings. These are set out in clause 2.

2 Definitions and Interpretation

- 2.1 In these terms and conditions the following words and phrases shall have the following meanings:-

Artwork means the artwork or design produced as part of the Services and approved by You in accordance with clause 4.1;

Business Day means any day on which the UK clearing banks in London are open for business;

Customer means the person, firm or company who purchases the Goods from Us;

We or Us means YRG Eclipse Limited (company number 01606456), whose registered office is at 20 Trinity Lane, Micklegate, York, YO1 6EL;

Contract means any contract between You and Us for the sale and purchase of the Goods, incorporating these terms and conditions;

Due Date means 30 days from the date of invoice;

Goods means Plates, Sleeves and any other goods agreed in the Contract to be supplied to You by Us as set out in the Order. Unless stated otherwise in the Order, an Order for the Goods will include the Services;

Image means the artwork or design provided by You to be engraved on the Goods;

Order means the official order with an order number issued by You for the Goods including the Specification and accepted by Us;

Plates means completed printing plates;

Price means the total price payable by You to Us under this Contract in accordance with clauses 9.1 and 9.2 below;

Pricing Schedule means the pricing schedule for the Goods and Services agreed between You and Us from time to time;

Services means reprographic services;

Sleeves means completed flexo polymer sleeves for the printing process;

Specification means full written instructions for the Goods to be provided by You;

Working Hours means 0900 to 1700 hours on a Business Day.

- 2.2 A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 2.3 Words in the singular include the plural and in the plural include the singular.
- 2.4 A reference to writing or written includes faxes and e-mail.

3 What We will do

- 3.1 We will provide the Goods in accordance with the Specification and at the Price. We will guarantee the quality of the Goods as set out in clause 11.
- 3.2 We shall only be obliged to provide the Services during Working Hours. Any Services which are required outside of Working Hours shall be subject to an additional fee calculated based on the Pricing Schedule, or if no Pricing Schedule is in place, Our standard price list in force at the date on which the Services are requested. If Services are required, whether during or outside of Working Hours, as a result of failure by YRG to provide the Goods in accordance with the Order then such Services shall be provided free of charge.
- 3.3 If the Order does not include Services then We will produce the Goods in accordance with the Image. We will not take any steps to verify the Image. If there are inaccuracies in the Goods due to errors in the Image then We will replace the Goods and invoice You for the Price of the replacement Goods and any additional Services carried out by Us to produce the replacement Goods.
- 3.4 We reserve the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4 Your Obligations - YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 4.1 You must approve the Artwork in writing within the timescales notified to You by Us. Failure to approve the Artwork within such timescales will result in a delay in the delivery of the Goods to You.
- 4.2 You agree that You are responsible for the Artwork once You have approved it. **If You have approved the Artwork and after such approval become aware of a defect in the Artwork then We will not be responsible for such defect even if it was caused by Our negligence.**
- 4.3 You must make sure that the Image is correct before it is sent to Us. You warrant to Us that you have all necessary rights and permissions to use the Image and shall indemnify Us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Us in connection with any claim made against Us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with producing the Goods using the Image. This clause 4.3 shall survive termination of the Contract.
- 4.4 On receipt of the Goods You must do a first impression and check the results of such first impression for inaccuracies before commencing a full print run using the Goods. If as a result of carrying out such first impression You become aware of any fault in the Goods then You must notify Us immediately and We will promptly provide You with replacement Goods. If We are responsible for the fault in the Goods then We will produce the replacement Goods without any further charge to You.
- 4.5 We will not be liable for any losses (including pure economic loss, loss of profit, loss of business, depletion of goodwill, downtime claims or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever) arising from a fault in the Goods if you do not carry out a first impression before commencing a full print run, notify Us of any faults and give Us a reasonable opportunity to produce replacement Goods.

5 Quotations and Orders

- 5.1 All quotations are made by Us on the basis that the Contract between You and Us shall not come into existence until You send an Order to Us.

- 5.2 Any quotation given by Us is valid for a period of 30 days from the date on which it was issued. We reserve the right to withdraw a quotation before the end of such 30 day period in exceptional circumstances for example, if Our supplier's increase their costs.
- 5.3 The Contract is formed when We have received an Order from You and We have agreed delivery dates for the Goods with You.
- 5.4 If You wish to cancel an Order after the Contract has been formed then You must notify Us in writing before We deliver the Goods or within 2 Business Days after the date of your Order whichever is the sooner. Orders cannot be cancelled after this timescale. If You cancel an Order within the required timescale then We will invoice You for the Services and the other work that We have carried out to produce the Goods before You notified Us of the cancellation of the Contract.
- 5.5 Any samples, drawings, descriptive matter or advertising issued by Us and any illustrations or descriptions of Goods and/or Services contained in our brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

6 Delivery of the Goods

- 6.1 Unless otherwise agreed in writing by Us, delivery of the Goods shall take place at the time when We deliver the Goods to the Royal Mail or a courier for transport to your premises or, if the Goods are delivered by Our drivers, when the Goods are delivered to You. Unless otherwise agreed, we will invoice You for the cost of carriage by Royal Mail or courier in accordance with clause 9.2.
- 6.2 Any dates specified by Us for delivery of the Goods are an estimate only as completion of the Goods depends upon You approving the Artwork in accordance with clause 4.1.
- 6.3 Unless otherwise agreed with Us, the minimum timescale for completion of a Sleeve is 2 weeks for the delivery of the fibreglass sleeve from Our supplier and 5 Business Days for Us to complete the Sleeve provided that the Artwork is approved by You in advance.
- 6.4 If We do not deliver the Goods on the estimated delivery date then You agree that this will not give You the right to terminate the Contract but provided that You have approved the Artwork, You can give Us written notice requiring Us to deliver the Goods within a reasonable timescale.
- 6.5 Subject to the other provisions of this Contract We shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, downtime claims, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Our negligence), nor shall any delay entitle You to terminate or rescind the Contract unless such delay exceeds:
- (a) 30 days for Orders for Sleeves; or
 - (b) 7 Business Days for Orders for Plates.
- 6.6 If You request Us to arrange for insurance of the Goods, You agree that You will be responsible for all charges incurred by Us relating to the insurance of the Goods and We will invoice You for such charges incurred.
- 6.7 In certain circumstances it may be necessary for Us to deliver the Goods by separate instalments. When this happens You agree that each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. In addition, each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle You to repudiate or cancel any other Contract or instalment.

7 Non-Delivery

- 7.1 The quantity of any consignment of the Goods as recorded by Us upon dispatch from Our Premises shall be conclusive evidence of the quantity received by You on delivery unless You can provide conclusive evidence proving the contrary.
- 7.2 We shall not be liable for any non-delivery of the Goods (even if caused by Our negligence) unless You have given written notice to Us of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 7.3 Our liability for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.

8 Risk and Ownership in the Goods

- 8.1 The Goods are at your risk from the time of delivery of the Goods to the courier or Royal Mail for transport to your premises or, if the Goods are delivered by YRG, when the Goods are delivered to your premises.
- 8.2 Ownership of the Goods shall not pass to You until We have received in full (in cash or cleared funds) all sums due to Us in respect of:
 - (a) the Goods; and
 - (b) all other sums which are or which become due to Us from You on any account.
- 8.3 Until ownership of the Goods has passed to You, You shall:
 - (a) hold the Goods on a fiduciary basis as Our bailee;
 - (b) store the Goods (at no cost to Us) separately from all your other goods so that they remain readily identifiable as Our property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) notify Us immediately if You become subject to any of the events listed in clause 13.2; and
 - (e) maintain the Goods in satisfactory condition and keep them insured on Our behalf for their full price against all risks to Our reasonable satisfaction; and
 - (f) give Us such information relating to the Goods as We may require from time to time, but You may use or resell the Goods in the ordinary course of your business.
- 8.4 If before title to the Goods passes to You, You become subject to any of the events listed in clause 13.2, or We reasonably believes that any such event is about to happen and notify You accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy We may have, We may at any time require You to deliver up the Goods and, if You fail to do so promptly, We may enter any of your premises or the premises of any third party where the Goods are stored in order to recover them.
- 8.5 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Us.
- 8.6 On termination of the Contract, howsoever caused, Our (but not your) rights contained in this clause 8 shall remain in effect.

9 Price

- 9.1 Unless otherwise agreed by Us in writing, the price for the Goods shall be the price specified in the Pricing Schedule. If there is not a Pricing Schedule agreed between You and Us at the time of the Order, then the Price shall be as set out in the Quotation or as notified in writing prior to You placing the Order.
- 9.2 The Price for the Goods shall be exclusive of:-

- (a) any value added tax; and
- (b) all costs or charges in relation to carriage and insurance of the Goods.

You agree to pay all of these sums in addition to the Price on or before the Due Date.

9.3 In certain circumstances We may need to increase the Price of the Goods after the Contract has been entered into. We will only do this where the increase is necessary:-

- (a) to reflect any increase in Our costs which is beyond Our control including an increase in the cost of raw materials to Us;
- (b) because of any change in delivery dates or Specifications for the Goods which is requested by You (including a request by You to suspend work under this Contract for any reason); and/or
- (c) due to the failure by You to give Us adequate information or instructions.

10 Payment

10.1 Subject to clause 10.4, payment of the Price for the Goods is due in pounds sterling on the Due Date. We reserve the right to invoice You for the cost of the raw materials and the work in progress carried out by Us on the Goods if the Goods are not completed within one calendar month of the date of Your Order due to your failure to approve the Artwork.

10.2 Time for payment shall be of the essence. Payments will only be considered to be received by Us when cleared funds are received into Our account.

10.3 All payments payable to Us under the Contract shall become due immediately on termination of this Contract regardless of anything contained in any other clause of this Contract.

10.4 You must make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless You have a valid court order requiring an amount equal to such deduction to be paid by Us to You.

10.5 If You fail to pay Us any sum due under this Contract within 7 days of the Due Date:

- (a) You shall be liable to pay interest to Us on such sum from the Due Date for payment at the annual rate of 4% above the base lending rate from time to time of Yorkshire Bank plc accruing on a daily basis until payment is made, whether before or after any judgment;
- (b) We reserve the right to suspend work on this Contract or on any other contract with You until payment of all sums due under this Contract are made in full;
- (c) We can give notice in writing to You to terminate this Contract; and
- (d) We reserve the right to bring a legal action against You for any amounts outstanding and to claim from You such sums as We are required to expend in pursuing such legal action.

11 Quality of the Goods

11.1 We warrant that (subject to the other provisions of these conditions) upon delivery the Goods shall correspond with the Specification.

11.2 We shall not be liable for a breach of the warranty in clause 11.2 unless:-

- (a) You give written notice of the defect to Us within 2 Business Day of delivery; and
- (b) We are given a reasonable opportunity after receiving the notice of examining such Goods and You (if asked to do so by Us) return the Goods to Our premises at Our cost for the examination to take place there.

11.3 We shall not be liable for a breach of the warranty in clause 11.2 if:

- (a) You make any further use of the Goods after giving such notice; or

- (b) the defect arises because You failed to follow Our reasonable oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) You alter or repair the Goods or allow anyone else to alter or repair the Goods without Our written consent.

11.4 Subject to clause 11.2 and clause 11.3, if any of the Goods do not conform with the warranty in clause 10.1, We shall at Our option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Price. In these circumstances We may request that You shall, at Our expense, return the Goods or the part of such Goods which is defective to Us.

11.5 If We comply with clause 11.4 We shall have no further liability for a breach of the warranty in clause 11.1, in respect of such Goods.

12 Returning Sleeve for Reuse

After You have completed your use of the Sleeve You may, with Our consent, return the Goods to Our premises to be stripped to the fibreglass sleeve in preparation for reuse. We will retain the Sleeve until such time as You place an Order for which it is possible to reuse the Sleeve. At the time You place such an Order We will process the Sleeve in accordance with the Specification to produce the Goods. The Sleeve remains in your ownership and at your risk while it is stored at Our premises.

13 Your Insolvency or Incapacity

13.1 If You become subject to any of the events listed in clause 13.2, or We reasonably believe that You are about to become subject to any of them and notify You accordingly, then, without limiting any other right or remedy available to Us, We may cancel or suspend all further deliveries under the Contract or under any other contract between You and Us without incurring any liability to You, and all outstanding sums in respect of Goods delivered to You shall become immediately due.

13.2 For the purposes of clause 13.2, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (c) (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- (g) (being a company) the holder of a qualifying charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or

- (h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2 (a) to clause 13.2 (g) (inclusive); or
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- (k) the Customer's financial position deteriorates to such an extent that in our opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14 Limitation of Liability – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

14.1 Subject to clause 4.5, clause 6, clause 7, and clause 10.5, the following provisions set out Our entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to You in respect of:

- (a) any breach of the Contract;
- (b) any use made or resale by You of any of the Goods, or of any product incorporating or created by use of any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

14.3 Nothing in these conditions excludes or limits Our liability:

- (a) for death or personal injury caused by Our negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession)
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession) or
- (e) for fraud or fraudulent misrepresentation.

14.4 Subject to clause 14.2 and clause 14.3:

- (a) Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and
- (b) We shall not be liable to You for any pure economic loss, loss of profit, loss of business, depletion of goodwill, downtime claims or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14.5 The Price is agreed on the basis of the amount of financial liability which We assume under this Contract, which is as set out in clause 14.4. If You require a higher financial limit of liability than that set out in clause 14.4, then You must give written notice to Us before placing an Order and We reserve the right to vary the Price accordingly.

14.6 This clause 14 shall survive termination of the Contract.

15 Confidentiality

15.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 15 shall survive termination of the Contract.

16 Formation of Contract

- 16.1 Subject to any variation under clause 15.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which You purport to apply under any purchase order, confirmation of order, specification or other document).
- 16.2 No terms or conditions endorsed on, delivered with or contained in Your purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 16.3 These conditions apply to all of Our sales. Any variation to these conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by a director of YRG Eclipse Limited.
- 16.4 Each order or acceptance of a quotation for Goods by You from Us shall be deemed to be an offer by You to buy Goods subject to these conditions.

17 Force Majeure

We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by You (without liability to You) if We are prevented from or delayed in the carrying on of Our business due to circumstances beyond Our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, You shall be entitled to give notice in writing to Us to terminate the Contract.

18 General

- 18.1 If any provision or part-provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 18.2 Failure or delay by either party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver by such party of any of its rights under the Contract.
- 18.3 Any waiver by Us of any breach of, or any default under, any provision of the Contract by You shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 18.4 Neither party shall be entitled to assign the Contract or any part of it without the prior written consent of the other party.

- 18.5 You acknowledge that You have not relied on any statement, promise or representation made or given by Us or on Our behalf which is not set out in the contract or a document referred to in the Contract or has been signed by a director of YRG Eclipse Limited. However, nothing in this clause shall exclude or limit Our liability for fraudulent misrepresentation.
- 18.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 18.7 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 18.8 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

19 Communications

- 19.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a) (in case of communications to Us) to the address set out in clause 2.1 or such changed address as shall be notified to You by Us; or
 - (b) (in the case of the communications to You) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to Us by You.
- 19.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 19.3 Communications addressed to Us shall be marked for the attention of a director.