

# Terms and Conditions

The following Terms and Conditions constitute the entire Agreement between the parties and supersede any previous agreements, warranties, representations, undertakings or understandings between the parties and may not be varied except in writing.

## 1. Definitions

- a. "Company" means XL Circondare Ltd registered in England and Wales (registered number 9652093) who provides the goods or services under these Terms and Conditions.
- b. "Customer" means the party contracting with the Company to acquire the goods and services supplied under these Terms and Conditions.
- c. "Website" means the Website of the Company, that being [www.xlpress.co.uk](http://www.xlpress.co.uk)
- d. "Work" means all goods (by way of intermediate or finished product) and services supplied by the Company to the Customer.
- e. "Intermediates" means all products produced during the manufacturing process including non-exhaustively discs, film, plates, and intellectual property.
- f. "Preliminary Work" means all work done in the concept and preparatory stages (including non-exhaustively design, artwork, proofs, colour matching).
- g. "Electronic File" means any text, illustration or other matter supplied or produced by either Party in digitised form on disc, by email, modem, internet, FTP, ISDN or any other communication link.
- h. "Print Ready File" means artwork supplied by the Customer ready for plate making and production, without further keyboard intervention by the Company, in digitised form on disc, by email, modem, internet, FTP, ISDN or any other communication link.
- i. "Insolvency" means the Customer is in a position where it is unable to pay its debts or has a winding up petition issued against it or has a receiver, administrator or administrative receiver appointed to it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him.

## 2. Price Variation

- a. Price estimates are based on the Company's current costs of production and, unless otherwise agreed in writing, are subject to amendment to meet any rise or fall in such costs that have taken place by the time of delivery.
- b. The Company is entitled to correct any price errors or omissions on estimates or invoices.
- c. The Company is entitled to change the price of Work published on the Website at any time but will honour the Website price published at the time of online order and payment.
- d. Prices published on the Website are subject to the Customer using the Website to submit an order and pay for the Work and other methods of submitting an order and payment for the Work may incur additional charges to reflect the

increased costs to the Company of processing such Work unless otherwise agreed in writing by the Company.

### **3. Tax**

Prices and estimates are given exclusive of tax and the Company reserves the right to charge and the Customer shall pay any VAT or other tax due.

### **4. Preliminary Work**

All Preliminary Work carried out by the Company at the Customers request, whether experimentally or otherwise, shall be charged.

### **5. Copy**

Any additional work required of the Company by reason of the Customer supplying inadequate copy, incomplete or incorrect instructions; or late delivery of the same shall be charged.

### **6. Proofs & Variations**

- a. The Company shall incur no liability for any errors not corrected by the Customer where the Customer has been provided with proofs. The Customer's alterations and additional proofs necessitated thereby shall be charged extra. When style, type or layout is left to the Company's judgement, changes therefrom made by the Customer shall be charged extra.
- b. Where the Customer specifically waives any requirement to examine proofs, (and the Company agrees to such a waiver), the Company is indemnified by the Customer against any and all errors in the finished Work.
- c. Proofs: Due to their inherent nature proofs supplied by the Company shall be accurate for layout and content only and it is understood and accepted that proofs shall not be accurate for colour comparison to the finished Work unless otherwise agreed in writing. If the Customer requests (and the Company agrees to) a more specific and achievable level of colour matching additional charges will apply.
- d. Printing process variations: All reasonable efforts will be made by the Company to obtain the best possible colour reproduction on the Customers Work but variation is inherent in the printing process and it is understood and accepted as reasonable that the Company shall not be required to guarantee an exact match in colour or texture between the Customers photograph, transparency, proof, Electronic File, Print Ready File, previously printed matter (whether printed by the Company or by a third party) or any other materials supplied by the Customer and the finished Work. Where the Work is produced using full colour printing (also known as process colour or CMYK printing) it is accepted and understood that Pantone colours (also known as spot colours) shall not be accurately reproduced due to the inherent nature of the printing process.
- e. Variations in quantity: Every endeavour will be made to deliver the correct quantity ordered. However, some variation is inherent in the printing process and it is understood and accepted that minor variations of the final quantity produced

subject to a variance of plus or minus 5% are immaterial, the same to be charged or deducted. Where the shortage is greater than 5% the limit of the Company's liability to the Customer shall be to make up the shortage within a reasonable period of time or credit for the shortage quantity.

## **7. Payment & Delivery**

- a. Payment shall become due and cleared at the Company's Bank, or authorised by the Bank in the case of Credit Card or Debit Card payment, before commencement of the Preliminary Work or unless otherwise agreed in writing.
- b. Unless otherwise agreed in writing, the price of the Work will be "ex-works" and delivery shall be charged extra.
- c. Should the Work be suspended or delayed by the Customer for any reason the Company shall be entitled to charge for storage and for loss of or wastage of resources that cannot otherwise be used.
- d. Should the suspension or delay in 7(c) above extend beyond 30 days the Company shall be entitled to immediate payment for Work already carried out, materials specially ordered and any other additional costs.
- e. Credit facilities may be granted to applicants who complete the Company's Credit Account Application Form and who satisfy the Company's criteria as set out from time to time. Where credit facilities are granted the Company reserves the right to withdraw them at any time, without having to give their reasons and, in such a case, all outstanding invoices become due and payable immediately.
- f. If Credit facilities have been granted, payment terms will be agreed at 30 Days from invoice date and the Customer shall pay invoices by the due date. If any item(s) remain unpaid by that due date charges will apply, in accordance with s5A and/or s6 of the Late Payment Commercial Debt (Interest) Act 1998 or any subsequent enactment. In addition, all invoices will become due and payable immediately and will be treated as overdue items, with appropriate charges applied and all costs reasonably incurred in collecting the debt payable by the Customer.
- g. Delivery of the Work shall be accepted when tendered.
- h. Unless otherwise agreed in writing completion and delivery lead-times (measured in working days from receipt of cleared or authorised payment and any Proofs approved in writing by the Customer) are a guide only and, whilst the Company will make every effort to adhere to proposed timescales, time is not of the essence in any contract with the Customer.
- i. Unless otherwise agreed in writing, (in which case an extra charge may be made), delivery will be to kerbside at the Customer's address and the Customer will make arrangements for off-loading and for any additional transportation to its storage facility.
- j. Subject to any agreement as per 7(i) above, delivery involving difficult access and/or unreasonable distance from vehicular access shall entitle the Company to make an extra charge to reflect the extra costs involved.
- k. Should expedited delivery be agreed the Company shall be entitled to make an extra charge to cover any overtime or any other additional costs incurred (including non-exhaustively courier or postage charges).
- l. Delivery prices published on the Website are for delivery the next working day after despatch by the Company to a single address in the Mainland United Kingdom excluding Highlands, Islands or Overseas (for which the Company

shall be entitled to make an extra charge to reflect the extra costs incurred).

m. Where the Work is to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms and Conditions or any claim by the Customer in respect of any one or more of the instalments shall not entitle the Customer to treat the order as a whole as repudiated or cancelled.

## **8. Materials supplied or specified by the Customer**

### **8.1 Electronic Files & Print Ready Files**

- a. It is the Customer's responsibility to maintain a copy of any original Electronic File or Print Ready File provided by the Customer.
- b. The Company shall not be responsible for checking the accuracy of supplied input from an Electronic File or Print Ready File unless otherwise agreed in writing.
- c. Without prejudice to clause 8.2(b), if an Electronic File or Print Ready File is not suitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action the Company may make a charge for any resulting additional cost incurred or may reject the file without prejudice to his rights to payment for Preliminary Work or Work done/materials purchased.

### **8.2 Other Materials**

- a. Metal, film and other materials owned by the Customer and supplied to the Company for the production of type, plates, film-setting, negatives, positives, electronic files and the like shall remain the Customer's exclusive property. However where the content is generated by the Company, the Company may, in order to protect his intellectual property rights and at his absolute discretion, replace such material with unused material of a similar or better quality.
- b. The Company may reject any film, discs, paper, plates, or other materials supplied or specified by the Customer which appear to him to be unsuitable for the purpose intended. Additional cost incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by the Company in ascertaining the unsuitability of the materials then that amount shall not be charged to the Customer.
- c. Without prejudice to clause 8.2.(b), where materials are so supplied or specified, and the Company so advises the Customer, and the Customer instructs the Company in writing to proceed anyway, the Company will use reasonable endeavours to secure the best results, but shall have no liability for the quality of the finished Work.
- d. Quantities of materials supplied shall be adequate to cover normal spoilage. Any costs incurred as a result of shortages, including re-starting jobs, duplicating masters etc will be charged in addition to the estimated price.

### **8.3 Risk and storage**

a. Customer's property and all property supplied to the Company by or on behalf of the Customer shall while it is in the possession of the Company or in transit to or from the Customer be deemed to be at Customer's risk unless otherwise agreed in writing and the Customer should insure accordingly.

b. The Company shall be entitled to make a reasonable charge for the storage of any Customer's property left with the Company before receipt of the order or after notification to the Customer of completion of the Work.

#### **8.4 Finished Goods**

a. The risk in the Work and all goods delivered in connection with the Work shall pass to the Customer on delivery and the Customer should insure accordingly.

b. On completion of the Work, the Company will store the Customer's materials and Work for a maximum of one month, after which time they will be destroyed without further notice.

## **9. Materials and equipment supplied by the Company**

a. Metal, film and other materials owned by the Company and used in the production of Intermediates, type, plates, film-setting, negatives, positives, electronic files and other production processes, together with items thereby produced, shall remain the Company's exclusive property.

b. Type shall be distributed and film and plates, tapes, discs, electronic files or other work destroyed immediately after the order is executed unless written arrangements are made to the contrary. In the latter event, storage shall be charged.

c. The Company shall not be obliged to download any digital data from his equipment or supply the same to the Customer on disc, tape or by any communication link.

## **10. Retention of Title**

a. The Work remains the Company's property until the Customer has paid for it and discharged all other debts owing to the Company.

b. If the Customer becomes subject to Insolvency and the Work has not been paid for in full the Company may take the goods back and, if necessary, enter the Customer's premises to do so, or to inspect and/or label the goods so as to identify them clearly.

c. If the Customer shall sell the goods before they have been paid for in full he shall hold the proceeds of sale on trust for the Company in a separate account until any sum owing to the Company has been discharged from such proceeds.

d. Where the Customer is in breach of these Terms or performs any act of Bankruptcy or Insolvency the Company reserves the right to approach the Customer's customer and to offer the Work directly to them, notwithstanding the fact that this will involve advising the Customer's customer that the Customer is in breach or in default.

## **11. Claims and Liability**

## **11.1 Claims**

- a. Advice of damage, delay or loss of goods in transit or of non-delivery must be given in writing to the Company and the carrier within three clear days of delivery (or, in the case of non-delivery, within 3 days of notification of despatch of the goods) and any claim in respect thereof must be made in writing to the Company and the carrier within seven clear days of delivery (or, in the case of non-delivery, within 7 days of notification of despatch). All other claims must be made in writing to the Company within 14 days of delivery. The Company shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Customer proves that (i) it was not possible to comply with the requirements and (ii) the claim was made as soon as reasonably possible.
- b. If the Work is defective so that the Customer may in law reject it, said rejection must take place within 7 days of delivery of the goods, failing which the Customer shall be deemed to have accepted the Work.
- c. In the event of all or any claims or rejections the Company reserves the right to inspect the Work within seven days of the claim or rejection being notified.
- d. Any request for delivery notes must be made within 7 days, after a period of 30 days these will no longer be available.

## **11.2 Liability**

- e. Insofar as is permitted by law where Work is defective for any reason, including negligence, the Company's liability (if any) shall be limited to rectifying such defect, or crediting its value against any invoice raised in respect of the Work.
- f. Where the Company performs its obligations to rectify defective Work under this condition the Company shall not be liable for indirect loss, consequential loss or third party claims occasioned by defective Work and the Customer shall not be entitled to any further claim in respect of the Work nor shall the Customer be entitled to repudiate the contract, refuse to pay for the work or cancel further deliveries.
- g. Defective Work must be returned to the Company before replacement or credits can be issued. If the subject Work is not available to the Company the Company shall hold that the Customer has accepted the Work and no credits or replacement Work will be provided.
- h. The Company shall not be liable for indirect loss, consequential loss or third party claims occasioned by delay in completing the Work or for any loss to the Customer arising from delay in transit, whether as a result of the Company's negligence or otherwise.
- i. Where the Company offers to replace defective Work the Customer must accept such an offer unless he can show clear cause for refusing so to do. If the Customer opts to have the Work re-done by any third party without reference to the Company the Customer automatically revokes his right to any remedy from the Company, including but not exclusively the right to a credit in respect of Work done by the Company.
- j. Where the Work will be forwarded by or on behalf of the Customer to a third party for further processing the Customer will be deemed to have inspected and

approved the Work prior to forwarding and the Company shall accept no liability for claims arising subsequent to the third party's processing.

k. The Company reserves the right to reject any work forwarded to him after initial processing by a third party as soon as is reasonably practicable without processing the work any further. Should the Customer require the Company notwithstanding to continue, then the Company is only obliged to do so after confirmation from the Customer in writing.

l. Nothing in these Terms and Conditions shall exclude the Company's liability for death or personal injury as a result of its negligence.

## **12. Insolvency**

Without prejudice to other remedies, if the Customer becomes insolvent, the Company shall have the right not to proceed further with the contract or any other Work for the Customer and be entitled to charge for Work already carried out (whether completed or not) and materials purchased for the Customer, such charge to be an immediate debt due to him. Any unpaid invoices shall become immediately due for payment.

## **13. General Lien**

Without prejudice to other remedies, in respect of all unpaid debts due from the Customer the Company shall have a general lien on all goods and property of or provided by the Customer in his possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property as agent for the Customer in such manner and at such price as he thinks fit and to apply the proceeds towards such debts, and shall when accounting to the Customer for any balance remaining be discharged from all liability in respect of such goods or property.

## **14. Illegal matter**

a. The Company shall not be required to print any matter which in his opinion is or may be of an illegal, offensive, extreme or libellous nature or an infringement of the proprietary or other rights of any third party.

b. The Company shall be indemnified by the Customer in respect of any claims, costs and expenses arising out of the printing by the Company for the Customer of any illegal or unlawful matter including matter which is libellous or infringes copyright, patent, design or any other proprietary or personal rights. The indemnity shall include (without limitation) any amounts paid on a lawyer's advice in settlement of any claim that any matter is libellous or such an infringement.

## **15. Copyright**

a. The Customer shall be responsible for obtaining all necessary authorities and consents to reproduce (non-exhaustively) artwork, photographs, copyright text and the like ("Materials") prior to instructing the Company to reproduce the

same. The Customer shall indemnify and hold blameless the Company against all demands, actions, costs, expenses (including but not limited to legal costs and disbursements), losses and damages arising from or suffered or incurred by reason of any claim (including but not limited to the defence of such claim) that the reproduction of the materials by the Company infringes the intellectual property or other rights of any third party or misuses the confidential information of a third party.

b. All design Work commissioned or ordered by the Customer and originated by the Company shall, as to its material elements and as to the copyright or design right in relation to it, belong to the Company.

c. The Customer shall not have any right to reproduce or authorise any other person to reproduce any such design Work in whole or in part or do any act which would, in the absence of written authorisation by the Company, infringe any copyright or design right which may subsist in relation to any such design Work.

d. The Company may, at the request of the Customer, assign the copyright and design right of design Work to the Customer upon payment of the Company's expenses in relation to such assignment.

## **16. Suitability of Work supplied**

It is the Customer's responsibility to ensure that the product ordered from the Company is suitable and the Company shall not be held liable if the Customer orders a product that is unsuitable for its intended use, including (non-exhaustively) incorrect type of paper specified for goods to be post processed through a laser, inkjet or similar printing device, self adhesive or label products which have special requirements such as to be removable and products that will be used in connection with food or food packaging. The Company will take all reasonable steps to assist the Customer in specifying the correct product if the Customer so requests.

## **17. Periodical Publications**

A contract for the printing of a periodical publication shall not be terminated by either party unless 13 weeks notice in writing is given in the case of periodicals produced monthly or more frequently or 26 weeks notice in writing is given in the case of other periodicals. Notice must be given after completion of Work on any one issue. Nevertheless the Company may terminate any such contract forthwith should any sum due thereunder remain unpaid.

## **18. Force majeure**

The Company shall be under no liability if he shall be unable to carry out any provision of the contract for any reason beyond his reasonable control including (without limiting the foregoing): Act of God; legislation; war; fire; flood; drought; inadequacy or unsuitability of any instructions, Electronic File, Print Ready File or other data or materials supplied by the Customer; failure of power or heating supply; lock-out, strike or other action taken by employees in



contemplation or furtherance of a dispute; or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Customer may by written notice to the Company elect to terminate the contract and pay for Work done and materials used, but subject thereto shall otherwise accept delivery when available.

## **19. Data Protection**

- a. By placing an order with the Company the Customer consents to its details being held by the Company for accounting purposes and passed to third party contractors where necessary to complete the Work (such as carriers for the purpose of delivering the Work to the Customer) and this information will be retained by the Company even after the trading relationship has ceased.
- b. By placing an order or registering on the Website the Customer consents to the Company using its information for marketing purposes whereby the Company may notify the Customer about its products, services or special offers that may be of interest, unless otherwise agreed.
- c. The Customer is hereby notified that the Company may transfer personal information about the Customer to a Credit Agency pursuant to clause 7(f) above.

## **20. Law**

These Terms and Conditions and all other express and implied terms of the contract shall be governed and construed in accordance with the laws of England and the parties agree to submit to the jurisdiction of the courts of England and Wales.

## **21. Notices**

All specifications and notices relied on by either Party and all variations to this agreement must be in writing and include a duly authorised signature.

## **22. Variation to Terms and Conditions**

These Terms and Conditions may be amended from time to time. The latest version of these Terms and Conditions may be accessed via the Website or requested in writing.

## **23. Consumers**

- a. Nothing in these Terms and Conditions shall affect the rights of Consumers.
- b. “Cooling off Period” - Due to the bespoke made to order nature of printed matter the Customer shall not be entitled to a “cooling off” period to cancel the Work ordered. However, if the Customer cancels any contract the Company shall only charge the Customer for any materials purchased for the contract and Preliminary Work or Work already undertaken up to the time of cancellation.

## **24. Severability**

All clauses and sub-clauses of this Agreement are severable and if any clause or identifiable part thereof is held to be unenforceable by any court of competent jurisdiction then such enforceability shall not affect the enforceability of the remaining provisions or identifiable parts thereof in these Terms and Conditions.

**April 2016**