

# Terms and Conditions of Business of Augustus Martin Limited

(Please note this contract contains a retention of title clause)

- 1) **Definitions.**

In these terms and conditions of business:

  - a) Company means Augustus Martin Limited.
  - b) Customer means the person, firm, company, corporation or other body purchasing goods or services of any description from the Company.
- 2) **Basis of Contract.** The placing and acceptance of any order is on the understanding that the customer agrees that these terms and conditions take complete precedence over all others and cover the complete understanding of the parties concerned and that there are no further conditions or obligations, oral or written, other than those stated here except where specifically agreed in writing by a Director of the Company.
- 3) **Quotations.** Quotations are valid for thirty days and are not binding until confirmed following receipt of order. The Company may vary the price quoted following sight of copy, or for any amendments and variations made at the customer's request. The Company reserves the right at any time without limit to rectify any accidental errors or omissions on quotations.
- 4) **Price Variation.** Prices are based on current labour and material costs. The Company reserves the right to adjust the price of goods at the date of despatch. Any increase will be substantiated by evidence of increased costs on request.
- 5) **Amendments and Cancellations.** Any order accepted by the Company may be amended or cancelled only with the Company's written consent. Any costs incurred by the Company in connection with the order will be charged.
- 6) **End Usage.** If requested the Company will make product recommendations for particular usage but no guarantee is given, either express or implied, and it is for the customer to satisfy himself as to the fitness of the Company's product for the end use that he has in mind and to advise the Company of any specific technical or safety requirements at the time of enquiry and order. The Company will use its discretion as to the product material used unless specifically instructed by the customer at the time of ordering. Samples of all substrates are available upon request. As part of its policy of ongoing quality improvements, and in response to market pressures, the Company reserves the right to upgrade or otherwise amend its material specifications without notice.
- 7) **Clarity of Copy.** A charge may be made to cover any extra work that may arise from copy that is supplied which is not clear and legible or where artwork supplied is not full size, black and white, colour separated and suitable for photographic reproduction without retouching.
- 8) **Colour Matching.** Unless a specific colour match is requested all colours will be in accordance with the Company's standard range. Any colour outside the standard range will be denoted a special match and charged accordingly. Whilst every effort will be made to achieve a commercially acceptable match, due to the technical problems involved in ink manufacture and the effects of different bases on the apparent colour, the Company cannot guarantee a perfect result.
- 9) **Origination, Design and Experimental Work.** Any origination, design and experimental work carried out at the customer's request shall be charged at the Company's standard rates.
- 10) **Proofs.** Photographic proofs will be supplied on request or where deemed necessary by the Company. No responsibility can be accepted where proofs are supplied and the customer fails to bring any error, whether made by the Company or the Customer, to the notice of the Company at the time. Any design changes or alterations to typefaces, layout or dimensions, due to the absence of explicit instructions, shall be charged as extra. Production will not commence without design approval, unless specific instructions to that effect are in place, and if approval is not received within three days of submission, or such shorter period as is agreed, despatch of the order may be affected.
- 11) **Variation in Quantity.** Due to the difficulties in manufacturing an exact quantity all orders are accepted conditional upon the Company's right to deliver 10% above or below the quantity ordered. The invoiced amount will be calculated using the confirmed price on the actual quantity delivered.
- 12) **Standing Material.** Any materials, tools, origination, computer files, films, plates or stencils used by the company in connection with the production of the Customer's order shall remain the property of the company. Plates and stencils will generally be effaced immediately the work is produced.
- 13) **Packing Despatch and Delivery.** Packing and despatch costs are excluded from the quotation and will be charged extra at cost. Delivery times are approximate and the Company cannot be held responsible for the consequences of late deliveries. Where a specific delivery date is negotiated every effort will be made to meet the customer's requirements. Unless otherwise specified the price quoted is for delivery of the work to the single address of the Customer shown on the quotation. A charge may be made to cover any extra costs involved for delivery to a different address or addresses. Split or deferred deliveries will only be undertaken following express agreement with the Company. Should expedited delivery be required an extra charge will be made to cover the additional costs involved.
- 14) **Errors on Delivery.** Complaints and claims cannot be entertained unless the Company is notified in writing within five working days of receipt of the consignment of any shortage in the stated quantity and or errors in copy, colours, size or clarity of the goods supplied.
- 15) **Damage or Loss in Transit.** In the event of damage in transit the Company must be advised in writing within three working days of receipt of the consignment. The customer must also advise the carrier concerned of any such damage at the same time as notifying the Company, retaining such evidence of damage as may be necessary. Non-delivery must be notified to the Company and the carrier in writing within fourteen days of the date of the invoice.
- 16) **Supplier's Identity.** The Company reserves the right as manufacturer to put its name and description on all goods supplied in addition to the legal requirements imposed under the Printers Imprint Act 1961 and any subsequent legislation. Custom and practice allow that in appropriate circumstances the name of an intermediary may be used to meet legal obligations under the act.
- 17) **Customer's Property.**
  - a. Property supplied by or on behalf of the customer whilst in the company's possession or in transit shall be entirely at the customer's risk unless otherwise agreed in writing between the parties.
  - b. The printer 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.
  - c. The Company shall be entitled to exercise a lien over all the Customer's property until the Company has been paid in full in respect of all claims the Company may have against the Customer or any persons or agents acting for or on behalf of the Customer.
- 18) **Copyright and Illegal Matter.**
  - a. The Company shall not be required to print any matter, which in its opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or any other rights of any other party.
  - b. The Customer shall indemnify the Company in respect of any claims, costs, and expenses arising out of any libellous matter or any infringement of copyright patent design or any other proprietary or personal rights contained in any material printed for the Customer. The indemnity shall extend to any amounts paid for legal advice on settlement of or otherwise related to any claim.
- c. The Company may use prints produced for a Customer as samples, entries to trade competitions or for other promotional purposes until such time as the Customer for whom the prints were originally produced shall have expressly forbidden such use.
- 19) **Liability.** The Company shall not be liable for any loss to the Customer arising from the consequences of any delay or loss during transit. Where negligence or error on the part of the Company can be conclusively proved then the Company's liability shall be limited to the replacement of the goods. The Company accepts no liability for consequential loss of any kind howsoever caused. In any dispute as to the quality or fitness for purpose of the goods delivered by the Company where agreement cannot be reached then the matter shall be referred to an independent arbitrator appointed by the British Printing Industries Federation and any costs shall be divided equally between the parties.
- 20) **Force Majeure.** The Company shall be under no liability if it is unable to carry out any provision of the order for any reason beyond its control including acts of God, legislation, war, acts of terrorism, fire, flood, drought, failure of power supplies, strike, lockout, or other action taken by employees in contemplation of furtherance of a dispute or owing to any inability to procure materials required for the performance of the order. During the continuance of such a contingency the Customer may by written notice to the Company elect to terminate the order and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.
- 21) **Passing of Property and Risk.**
  - a. Risk of loss or damage to or deterioration of the goods shall pass to the Customer on the same being delivered to the Customer (or his nominated bailee or agent) at the address specified in the estimate and the Company shall have no responsibility for the goods thereafter.
  - b. Notwithstanding that the goods are at the risk of the Customer the goods shall remain the Company's sole and absolute property as legal and equitable owner until all sums due from the Customer to Company in respect of the goods and all other goods sold or supplied by the Company to the Customer have been paid in full.
  - c. The Customer acknowledges that so long as the Customer is in possession of any property of the Customer the Company shall hold such property as the bailee of the Company and shall keep such property separately stored and/ or marked so as to be identifiable as the property of the printer and shall be kept free of lien, charge or encumbrance.
  - d. The Company shall be entitled to recover the goods if:
    - i. Payment for the goods or any other debt due from the Customer to the Company in respect of supplies of goods or works is overdue, or
    - ii. The customer is a sole trader or partnership and the sole trader or any of the partners or the partnership fails to comply with a statutory demand served by the Company on the Customer pursuant to section 268 of the Insolvency Act 1986 or a petition for bankruptcy order to be made against any of them is presented to the court, or
    - iii. The Customer is a company and an administrative receiver or receiver is appointed over the whole or any part of its assets or the Customer commences winding-up or an administration order is made, or
    - iv. Any distress or execution shall be levied on the Customer's property or assets: and for such purpose the Company's servants or agents may enter any premises where the goods are or are reasonably believed to be and may take possession of or sell the same and shall apply the sale proceeds after deducting therefrom the cost of recovering the goods and selling the same first in discharging all debts due from the Customer to the Company in respect of supplies of goods or works and secondly in paying the surplus to the Customer.
  - e. The Customer shall not be deemed to be the agent of the Company for any purpose and shall indemnify the Company against any liability that the Company may incur to third parties (whether in contract tort or otherwise and including all expenses of the Company attributable thereto) in connection with the goods, other than liability which would have arisen if the preceding paragraphs of this condition had not formed part of the contract of sale.
  - f. The Company's rights hereunder and each of them shall continue notwithstanding the termination of the contract of sale by reason of repudiation, frustration, or otherwise howsoever arising.
  - g. The Customer is under a duty to notify third parties of this clause 22(ii) a to g and the Company's rights in the goods including ownership until payment in full has been made.
- 22) **Terms of Payment.** Delivery of work shall be accepted when tendered and title to the goods shall pass on despatch and payment shall become due on the Company's normal terms. Should work be suspended at the request of or delayed through any fault of the Customer for a period exceeding thirty days the Company shall be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage. Payment is due on the last day of the month following the month of invoice and is strictly net unless other terms including discounts have been specifically agreed in writing by a director of the Company. The Company reserves the right to charge interest on overdue accounts at the rate of 2% per month to run from the due date of payment until receipt of the full amount by the Company whether or not judgement has been granted in respect of the debt. The Company reserves the right to withhold further goods where the account is in arrear. Any part of an order in course of manufacture may be completed and invoiced to the Customer. The Company reserves the right at any time without limit to rectify any accidental errors and omissions on invoices. The Company reserves the right to set off any monies due from the Company to the Customer (or holding, subsidiary or associated company) against monies due to the Company.
- 23) **VAT.** The Company reserves the right to charge Value Added Tax at the rate ruling at the tax point date whether or not it appears on the quotation or invoice.
- 24) **General Lien.** If the Customer cannot pay his debts as they become due the Company shall have the right not to proceed further with any order or other work for the customer and be entitled to charge for work already carried out whether completed or not, such a charge to be an immediate debt due to the Company in respect of all unpaid debts due from the Customer, the Company shall have a general lien on all goods and property in his possession whether worked on or not and shall be entitled on the expiration of fourteen days notice to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards such debts.
- 25) **Law.** The conditions and all other express terms of the Contract shall be governed by and construed in accordance with the laws of England.