



CONDITIONS OF TRADING

These Conditions, together with any Special Conditions (as defined below) govern all supplies to customers by Tradewinds Logistics Limited (Trading As WeAreUSB.com) a company registered in England and Wales with Company number 08943729 ("TWL") and/or its Group Companies (as defined below) of all Goods and Services (as defined below). These Conditions apply to the exclusion of any other terms and conditions.

TWL may change these Conditions from time to time. Please read these Conditions prior to each purchase made.

1. Interpretation

1.1. The following terms shall apply to these Conditions:

- a) **Contract:** the contract between TWL and the Customer for the supply of Goods and/or Services in accordance with these Conditions and any Special Conditions (if applicable);
- b) **Customer:** the person or firm who purchases Goods and/or Services from TWL;
- c) **Customer Materials:** any artwork, designs, drawings, written description, photograph, digital artwork, electronic data or other materials provided to TWL by the Customer in connection with which the Services are to be provided, including those materials input into the TWL System by the Customer;
- d) **Goods:** the Goods (or any part of them) set out in the Order;
- e) **Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and TWL;
- f) **Group Company:** in relation to TWL, any subsidiary undertaking of it, any holding Company of it and any subsidiary undertaking of any such holding Company;
- g) **Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- h) **TWL Materials:** any equipment, documents, information, materials, and systems, provided by TWL and used directly or indirectly in the supply of the Goods or Services which are not the subject of a separate agreement between the parties under which title passes to the Customer but excluding the Customer Materials;
- i) **Order:** the Customer's Order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written or verbal acceptance of TWL's quotation, as the case may be;
- j) **Proof(s):** a proposed detailed mock up of the Goods provided by TWL to the Customer, in accordance (in all material respects) with the Goods Specification;
- k) **Services:** the services supplied by TWL to the Customer as set out in the Service Specification;
- l) **Service Specification:** the description or specification of the Services provided in writing by TWL to the Customer;
- m) **Special Conditions:** the Special Conditions (if any) notified by TWL to the Customer in writing relating to the supply of the Goods and/or Services.

1.2. In these Conditions, the following rules apply:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality);

- b) a reference to a party includes its successors or permitted assigns;
- c) a reference to a statute or statutory provisions is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- e) a reference to writing or written includes faxes and emails;
- f) any applicable Special Conditions are supplemental to these Conditions. In the event of any conflict or inconsistency between these Conditions and any Special Conditions, these Conditions shall prevail but only to the extent of that conflict or inconsistency;
- g) a reference to the singular includes a reference to the plural and vice versa.

2. Basis of Contract

- 2.1. The Order constitutes an offer by the Customer to Purchase Goods and/or Services in accordance with these Conditions. TWL may decline any Customer Order upon receipt.
- 2.2. The Order shall only be deemed to be accepted when TWL issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3. A Contract may not be cancelled by the Customer except by mutual agreement in writing and then only on terms which would fully indemnify TWL for its losses resulting from such cancellation.
- 2.4. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5. Any samples, drawings, descriptive matter or advertising issued by TWL and any descriptions of the Goods or illustrations or descriptions of the Services contained in TWL's catalogues or brochures 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.
- 2.6. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7. Any quotation given by TWL shall not constitute an offer and may be revised by TWL at any time prior to acceptance of the Order by it, pursuant to condition 2.2. Any quotation is only valid for a period of 20 Business Days from its date of issue.
- 2.8. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.9. Where TWL has notified any Special Conditions to the Customer, these Special Conditions shall form part of the Contract. If there is any conflict and/or inconsistency

between these Conditions and the Special Conditions, the Special Conditions shall prevail.

3. Goods

- 3.1. The Goods are as described in the applicable Goods Specification.
- 3.2. To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify TWL 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 professional costs and expenses) suffered or incurred by TWL in connection with any claim made against TWL for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with TWL's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. TWL reserves the right to amend the specification of the Goods and/or the Goods Specification if required by any applicable statutory or regulatory requirements

4. Delivery of Goods

- 4.1. Unless otherwise agreed in writing by TWL shall deliver the Goods to the Customer's premises as notified by TWL to the Customer in writing or such other location as may be advised by TWL before delivery (**Delivery Location**) within three Business Days of TWL notifying the Customer that the Goods are ready.
- 4.2. Unless otherwise agreed in writing by TWL, delivery of the Goods shall be completed on the completion of loading of the Goods at TWL premises.
- 4.3. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Without prejudice to the foregoing, TWL shall not be liable for any delay in delivery of the Goods that is caused by a delay in transit, any third party, a Force Majeure Event or the Customer's failure to provide TWL with adequate delivery instructions or any other instructions or materials that are relevant to the supply of the Goods.
- 4.4. In the event that expedited delivery is agreed in writing between the parties and necessitates overtime or additional costs on the part of TWL, the Customer shall immediately pay such extra charges upon notification by TWL.
- 4.5. If TWL fails to deliver the Goods, its liability (whether in contract, tort, negligence or otherwise and howsoever arising) shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.6. If the Customer fails to accept or take delivery of the Goods within five Business Days of TWL notifying the Customer that the Goods are ready or if the Customer otherwise fails to take delivery when it is tendered by TWL, then except where such failure or delay is caused by a Force Majeure Event or by TWL's failure to comply with its obligations under the Contract in respect of the Goods:
 - a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which TWL notified the Customer that the Goods were ready;
 - b) TWL shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
 - c) the Customer shall pay TWL for the Goods, any Services and any additional costs and expenses incurred in the provision, by TWL, of the Goods or Services (including, without limitation, any storage costs).
- 4.7. If twenty Business Days after TWL tendered delivery or notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, TWL may resell or otherwise dispose of part or all of the Goods.
- 4.8. TWL shall endeavour to deliver the quantity of Goods ordered by the Customer. The Customer shall not be entitled to reject the Goods if TWL delivers up to and including:
 - a) 5 per cent more or less than the quantity of Goods ordered where the Goods ordered are in one colour; or

- b) ten per cent more or less than the quantity of Goods ordered for all other Goods but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

- 4.9. TWL may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment. In the event that the Customer fails to accept any delivery the provisions of condition 4.6 shall apply.

5. Quality of the Goods

- 5.1. TWL warrants that on delivery (unless specified otherwise in any applicable Goods Specification), the Goods shall:
 - a) conform in all material respects with their description and any applicable Goods Specification; and
 - b) be free from material defects in design, material and workmanship.
- 5.2. Subject to clause 5.3, if:
 - a) the Customer gives notice in writing within [5] working days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - b) TWL is given a reasonable opportunity of examining such Goods; and
 - c) the Customer (if asked to do so by TWL) returns such Goods to TWL's place of business at TWL's cost.TWL shall, at its sole option, rectify or replace the defective Goods, or refund the price of the defective Goods in full. TWL shall have no liability or obligation under condition 5.1 other than to remedy the same in accordance with this clause 5.2.
- 5.3. TWL shall not be liable (whether in contract, tort, negligence or otherwise and howsoever arising) for the Goods' failure to comply with the warranty in clause 5.1 if:
 - a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - b) the defect arises because the Customer failed to follow TWL's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - c) the defect arises as a result of TWL following any instructions, or using any materials, drawing, design or Goods Specification supplied by the Customer;
 - d) the Customer alters or repairs such Goods without the written consent of TWL;
 - e) the defect arises as a result of fair wear and tear, wilful damage, negligence, any third party amendments (including, without limitation, processing) or abnormal working conditions; or
 - f) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4. Where TWL offers to repair, replace or refund the Customer (in accordance with condition 5.2) and the Customer rejects such offer and opts to have the Goods repaired by a third party, the Customer shall automatically waive its rights to any remedy under condition 5.2 (including, without limitation, in respect of any refund of the price paid by the Customer to TWL for the defective Goods).
- 5.5. Except as provided in this clause 5, TWL shall have no liability (whether in contract, tort, negligence or otherwise and howsoever arising) to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by TWL under clause 5.2.
- 5.7. Prior to the printing of any Goods, TWL shall provide the Customer with a Proof. The Customer may:
 - a) approve the Proof by written acceptance in writing to TWL; or
 - b) reject the Proof and require specific amendments by written notice to TWL. Such amendments and any additional Proofs shall be charged to the Customer; and

following approval by the Customer of any Proof, TWL shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for any error, fault or defect in the Goods (whether grammatically, in type, format, style, layout, design or otherwise) where the Goods are, in all material respects, in accordance with the Proof approved by the Customer.

- 5.8. Where the Customer does not provide a written approval or rejection of the Proof (pursuant to clause 5.7 of these Conditions), nominates TWL to review the Proofs or otherwise waives its rights of review of the Proofs, TWL shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for any error, fault or defect in the Goods (whether grammatically, in type, format, style, layout, design or otherwise) where the Goods are, in all material respects, in accordance with the Goods Specification.
- 5.9. The Customer acknowledges and accepts that paper, inks and other environmental conditions may impact on the colour or production of the Goods ("Minor Variation"). TWL shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for a Minor Variation between Proofs and the Goods.

6. Title and Risk

- 6.1. The risk in the Goods shall pass to the Customer on despatch of the Goods for delivery. TWL shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for any loss, damage or deterioration in the quality of the Goods following despatch of the Goods.
- 6.2. Title to the Goods shall not pass to the Customer until TWL has received payment in full (in cash or cleared funds) for:
- the Goods; and
 - any other goods that TWL has supplied to the Customer in respect of which payment has become due.
- 6.3. Until title to the Goods has passed to the Customer, the Customer shall:
- hold the Goods on a fiduciary basis as TWL's bailee;
 - store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as TWL's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on TWL's behalf from the date of delivery;
 - notify TWL immediately if it becomes subject to any of the events listed in clause 13.1(b); and
 - give TWL such information relating to the Goods as TWL may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 6.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b), or TWL reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy TWL may have, TWL may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

- 7.1. TWL shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2. TWL shall use its reasonable endeavours to meet any performance dates for the Services specified in any quotation, order confirmation and/or the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3. TWL shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect

the nature or quality of the Services, and TWL shall notify the Customer in any such event. TWL shall not be liable (whether in contract, tort, negligence or otherwise and howsoever) under this clause 7.3.

- 7.4. TWL warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer Obligations

- 8.1. The Customer shall:

- ensure that the terms of the Order and (if submitted by the Customer) the Services Specification are complete and accurate;
- co-operate with TWL in all matters relating to the Services;
- provide TWL, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by TWL to provide the Services;
- provide TWL with such information and materials as TWL may reasonably require to supply the Services, and ensure that such information is accurate;
- prepare the Customer's (or relevant third party's) premises for the supply of the Services; and
- obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date upon which the Services are to start.

- 8.2. The Customer shall indemnify TWL and keep TWL fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatever nature arising out of or in connection with any claim that the use by TWL or its sub-contractors of any information, images or materials supplied by the Customer for the purpose of enabling TWL to provide the Goods and/or the Services ("Customer Materials") infringes the intellectual property or other rights of any third party.

- 8.3. TWL shall not be obliged to check or verify the quality, accuracy, sufficiency or suitability of any Customer Materials, information or materials provided to it pursuant to the Contract. However, TWL may reject any Customer Materials which TWL finds unsuitable to be incorporated into and/or used as part of the provision of the Goods and/or Services ("Unsuitable Customer Materials"). The Customer shall replace any Unsuitable Customer Materials within 14 days of notification of the unsuitability of the Customer Materials by TWL. If the Unsuitable Customer Materials are not so replaced, TWL shall use the Unsuitable Customer Materials in the provision of the Goods and/or Services. TWL shall use reasonable endeavours to ensure good results in respect of Goods and/or Services where Unsuitable Customer Materials are used. However, the Customer acknowledges and accepts that TWL shall have no liability whatsoever (whether in contract, tort, negligence or otherwise and howsoever arising) for any error, default, defect and/or imperfection ("Defect") in the Goods and/or Services where such Defect is due (whether wholly or in part) to the provision of Unsuitable Client Materials by the Customer. Any additional costs incurred by TWL by virtue of the provision of Unsuitable Customer Materials by the Customer may be charged to the

- 8.4. TWL may refuse to provide Goods and/or Services to the Customer where any goods, materials, information or work provided to TWL by the Customer have already been processed by a third party. In the event that TWL provides Goods and/or Services to the Customer with any goods, information, materials or work previously processed by a third party, the Customer acknowledges and accepts that TWL shall have no liability (whether in contract, tort, negligence or otherwise and howsoever arising) for the quality of the Goods and/or Services provided.

- 8.5. If TWL's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission of the Customer (and/or any supplier, sub-contractor or client of the Customer) or failure by the Customer (and/or any supplier, sub-contractor or client of the Customer) to perform any relevant obligation (**Customer Default**):
- TWL shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies (or procures the remedy of) the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to

- the extent the Customer Default prevents or delays TWL's performance of any of its obligations;
- b) TWL shall not be liable (whether in contract, tort, negligence or otherwise and howsoever arising) for any costs or losses sustained or incurred by the Customer (and/or any client of the Customer) arising directly or indirectly from TWL's failure or delay to perform any of its obligations as set out in this 8.2; and
- c) the Customer shall reimburse TWL on written demand for any costs or losses sustained or incurred by TWL arising directly or indirectly from the Customer Default.

9. Charges and Payment

- 9.1. The price for the Goods shall be the price set out in the Order or, if no price is quoted, the price set out in TWL's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2. Unless agreed otherwise in the Service Specification and/or in TWL's quotation, the charges for Services shall be on a time and materials basis and:
 - (a) the charges shall be calculated in accordance with TWL's standard daily fee rates as notified by TWL to the Client from time to time;
 - (b) TWL's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - (c) TWL shall be entitled to charge an overtime rate for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
 - (d) TWL shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom TWL engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.3. TWL reserves the right to:
 - (a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. TWL shall give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify TWL in writing within two weeks of the date of TWL's notice and TWL shall have the right (without limiting its other rights or remedies) to terminate the Contract by giving 12 weeks' written notice to the Customer (during which notice period the charge increase will not take effect); and
 - (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to TWL that is due to:
 - (i) any factor beyond the control of TWL (including (without limitation) foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions or materials provided by the Customer or any failure by the Customer to give TWL adequate or accurate information, materials or instructions in respect of the Goods.
- 9.4. For the avoidance of doubt, TWL shall be entitled to charge the Customer for the time it has incurred in the preparation or execution of the whole or any part of the Goods or Services pursuant to the Contract.
- 9.5. Unless otherwise agreed by the parties in writing, TWL shall invoice the Customer monthly in arrears for the Goods and Services.
- 9.6. The Customer shall pay each invoice submitted by the Supplier:
 - a) within 30 days of the date of the invoice; and
 - b) in full and in cleared funds to a bank account nominated in writing by TWL, and
 - c) time for payment shall be of the essence of the Contract.

- 9.7. All amounts payable by the Customer under the Contract are exclusive of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by TWL to the Customer, the Customer shall pay to TWL such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8. Without limiting any other right or remedy of TWL, if the Customer fails to make any payment due to TWL under the Contract by the due date for payment (**Due Date**), TWL shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above TWL bank's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.9. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against TWL in order to justify withholding payment of any such amount in whole or in part. TWL may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by TWL to the Customer.

10. Intellectual Property Rights

- 10.1. Unless otherwise agreed between the parties in writing, and subject to clause 10.5, the Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by TWL.
- 10.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on TWL obtaining a written licence from the relevant licensor on such terms as will entitle TWL to license such rights to the Customer.
- 10.3. All TWL Materials and any Intellectual Property Rights subsisting in them are at all times the exclusive property of TWL. For the avoidance of doubt, the Customer shall not at any time have any Intellectual Property Rights or other rights of ownership in the TWL System.
- 10.4. The Intellectual Property Rights in the Customer Materials shall be owned by the Customer.
- 10.5. Unless otherwise agreed in writing, the Customer acknowledges and accepts that TWL has no control over any content, materials or information printed on any Goods by TWL pursuant to these Conditions.
- 10.6. TWL may refuse to provide Goods and/or Services to the Customer if it reasonably believes any Customer Materials, information, materials and/or work infringes any applicable laws, regulations or third party rights (such as content that is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights ("Inappropriate Content").
- 10.7. The Customer shall indemnify TWL in full against all liability, damages, losses, costs and expenses incurred by TWL arising as a result of or in connection with the Customer Materials, or any other materials, information or works used, produced, printed, processed or dealt with in any way by TWL on behalf of the Customer pursuant to these Conditions (including, without limitation, where a claim or action is brought against TWL that the Customer Materials, materials, information or works form Inappropriate Content (as defined at Condition 10.6).

11. Confidentiality

- 11.1. 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 or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality

corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. Limitation of Liability

12.1. Nothing in these Conditions shall limit or exclude TWL's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation or any other matter which by law cannot be limited or excluded.

12.2. Subject to clause 12.1:

- a) TWL shall under no circumstances whatever be liable to the Customer, whether in contract, tort, negligence, breach of statutory duty, or otherwise (and howsoever arising), for any loss of profit, loss of revenue, or any indirect or consequential loss arising under or in connection with the Contract (including, without limitation, loss of goodwill, loss of reputation, loss of data and loss of opportunity); and
- b) TWL's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort, negligence, breach of statutory duty, or otherwise (and howsoever arising), shall in no circumstances exceed the total sum paid to TWL by the Customer under the Order for the Goods or Services to which the claim relates.

12.3. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4. This clause 12.4 shall survive termination of the Contract.

13. Termination

13.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing of the breach;
- (b) the other party 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, has a bankruptcy order made against it; becomes insolvent or goes into liquidation, receivership or administration; has an administrator appointed; is wound up; has an encumbrancer take possession of any of its assets; enters into a composition or arrangement with its creditors; being a partnership, has a bankruptcy order made against any of the partners or a notice served by a partner for dissolution of the partnership; or takes or suffers any similar or analogous action in any jurisdiction.

13.2. Without limiting its other rights or remedies, TWL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:

- (a) fails to pay any amount due under this Contract on the due date for payment; or
- (b) undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).

13.3. Without limiting its other rights or remedies, TWL shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and TWL if:

- (a) the Customer fails to pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 13.1(b), or TWL reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of Termination

14.1. On termination of the Contract for any reason:

- a) the Customer shall immediately pay to TWL all of TWL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, TWL shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the Customer shall return all of TWL's Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then TWL may enter the Customer's premises and take possession of them. Until they have been

returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. General

15.1. Intellectual Property Rights:

- a) for the purpose of this clause "IPR" shall mean all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including applications for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world. All IPRs arising out of or in connection with the Contract, Goods or Services shall belong, at all times, to TWL irrespective of any payments made to TWL by the Customer;
- b) unless otherwise agreed in advance, in writing, TWL shall immediately destroy any information and materials (including, without limitation, film, plates, tapes, discs, electronic files and any other work) following completion and/or delivery of the relevant Goods or Services to which the Order relates. In the event that the parties agree in writing that TWL shall store such information or materials, storage shall be charged to the Customer.

15.2. Claims

- a) All claims against TWL on whatever grounds under or in connection with the Contract, Goods or Services must be notified to TWL in writing:
 - i. within ten days of the provision of the Services or delivery of the Goods; or
 - ii. in respect of claims for non-delivery of the Goods, within seven days of receipt by the Customer of notice of despatch; or
 - iii. in respect of claims for damage or partial loss of Goods in transit, within three days of delivery of the Goods.
- b) In the event that notice is not received by TWL from the Purchaser within the time periods outlined at condition 15.2(a)(i) - (iii) above, TWL shall be deemed to have fulfilled all of its obligations under the Contract (whether express or implied).
- c) TWL shall not accept the return of any Goods to it by the Customer unless TWL has had a reasonable opportunity to examine the same.

15.3. Force majeure:

- a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of TWL including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, acts or omissions of third parties or default of suppliers or subcontractors.
- b) TWL shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- c) If the Force Majeure Event prevents TWL from providing any of the Services and/or Goods for more than 60 days, either party shall have the right to terminate this Contract immediately by giving written notice to the other party.

15.4. Assignment and subcontracting:

- a) TWL may at any time assign, novate, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- b) The Customer shall not, without the prior written consent of TWL, assign, transfer, novate, charge, subcontract or

deal in any other manner with all or any of its rights or obligations under the Contract.

- 15.5. Notices: Any notice required or permitted to be given by either party to the other shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
- 15.6. Waiver and cumulative remedies: No failure or delay by either party in exercising any of its rights under this Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of this Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.7. Severance: If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 15.8. No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.9. Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.10. Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by TWL.
- 15.11. Governing law and jurisdiction: This Contract, 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, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.

16. Periodical Publications

- 16.1. A contract for the printing by TWL of a periodical publication (a "Periodical Contract") may not be terminated by either party unless 13 weeks notice in writing is given to the other 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 may be given at any time but wherever reasonably possible should be given after completion of printing on any one issue. Nevertheless, TWL may terminate any such contract forthwith should any sum due under the contract remain unpaid and outstanding.
- 16.2. If the Customer terminates a Periodical Contract by giving less than the required period of notice specified under clause 17.1 then the Customer shall pay to TWL a sum by way of liquidated damages calculated in accordance with the provisions of clause 17.3 and both the Customer and TWL agree that such sum is a genuine pre estimate at the time of making that contract of TWL's loss in the event of the Customer so terminating the contract.
- 16.3. For each week or any part thereof for which the Customer fails to give TWL notice to terminate a Periodical Contract in accordance with clause 17.1 the Customer shall pay to TWL a sum equal to one quarter of the average price charged to

the Customer by TWL for the last six issues of the periodical in question printed (or in the event of TWL having printed less than six issues of the periodical for the Customer the liquidated damages shall be calculated upon the average price charged to the Customer for so many issues of the periodical as may have been printed by TWL for the Customer) multiplied by the number of issues of the periodical that would have been printed by TWL in the remainder of the notice period had proper notice been given under clause 17.1.

- 16.4 Following termination of a Periodical Contract, TWL may on the expiration of fourteen days notice to the Customer dispose of all property of the Customer in its possession (including the publications) and apply any proceeds towards monies due to it hereunder and TWL shall not be liable to the Customer for any loss arising from any such disposal.
17. **E-commerce transactions**
 - 17.1 To the extent permitted by English law, TWL and the Customer may conduct transactions using an electronic commerce approach under which they will electronically transmit and receive legally binding purchase and sale obligations including electronic credit entries transmitted by the Customer to TWL's bank account in such manner as may be notified by TWL to the Customer from time to time ("Electronic Communications"). For the purposes of this condition 17, the "originating party" will mean the party transmitting an Electronic Communication and the "receiving party" will mean the party receiving such communication.
 - 17.2 If the parties choose to conduct transactions pursuant to the provisions of condition 17.1 then:
 - 17.2.1. The Customer will provide and maintain the equipment, software, services and testing facilities necessary for it to effectively and reliably transmit and receive Electronic Communications.
 - 17.2.2. Either party may use a third party service provider for network services provided that the other party is given sixty (60) days prior written notice of any changes to such services.
 - 17.2.3. An Electronic Communication will be deemed received upon arrival at the receiving party's mailbox at the Internet address notified to the receiving party by the originating party from time to time or, where TWL is the receiving party, when the Electronic Communication is accessed by it in intelligible form. The receiving party will promptly notify the originating party if an Electronic Communication is received in an unintelligible form providing that the originating party can be identified in the absence of such notice, the originating party's record of the contents of such Electronic Communication will prevail.
 - 17.2.4. Each party will authenticate documents using a digital signature or User ID (an "authentication"), as agreed between the parties, and will maintain security procedures to prevent its unauthorised use. Each party agrees that any authentication contained in any transmitted document will be sufficient to confirm such party originated such Electronic Communication.
 - 17.3. Each party shall furnish to the other a list of individuals authorised by it to transmit Electronic Communications and the appropriate authentication. Each party will maintain security provisions to prevent the unauthorised disclosure of such information.

TWL Special Conditions

These Special Conditions, together with our general Conditions, shall govern all supplies to Customers by TWL of film, photography, graphic design, website design, website hosting, software development and related services and any other services which TWL may from time to time agree to provide to the Customer.

The Customer's purchase of Goods and/or Services shall be subject to TWL's Conditions and these Special Conditions and the Customer is advised to read both documents together prior to placing an Order.

Unless otherwise stated in these Special Conditions, the defined terms in TWL's general Conditions shall apply to these Special Conditions.

These Special Conditions are supplemental to TWL's general Conditions. In the event of any conflict or inconsistency between these Special Conditions and TWL's general Conditions, TWL's general Conditions shall prevail but only to the extent of such conflict or inconsistency.

Definitions and Interpretation

1.1 In these Conditions:

"Acceptance Date" means the date upon which the Software is deemed accepted by the Customer pursuant to clause 4.2 of these Conditions

"Conditions" means the conditions set out in this document and (unless the context otherwise requires) includes any supplemental or special conditions appearing or referred to on the Estimate

"Contract" means the contract for the supply by TWL to the Customer of the Services, Materials and/or the Software

"Customer" means the person named in the Estimate

"Designated Equipment" means the Customer's computer equipment upon and in conjunction with which the Software is to be installed and used as identified in the Estimate

"Documentation" means the documentation supplied by TWL in connection with the Software and/or Services

"Equipment" means the computer hardware, network and associated peripherals equipment specified in the Specification or such other equipment as may be agreed from time to time, whether such equipment is operated by the Customer or a third party on the Customer's behalf or operated by TWL pursuant to a website hosting agreement

"Estimate" means TWL's written quotation for the supply of Services, Materials and/or Software as varied, where applicable, by TWL's written order confirmation

"Intellectual Property Rights" means patents, trademarks, Internet domain names, registered designs, applications for any of the foregoing, copyright, design rights, know-how, confidential information, database rights, trade and business names and any other similar protected rights in any country

"Licensed Materials" means the Software and associated Documentation

"TWL" means TWL Create Limited

"Materials" means any and all works of authorship including, without limitation, artwork, designs or other materials (excluding Software) which TWL is to provide to the Customer pursuant to the Contract

"Services" means the graphic design, website design, website hosting, software development and/or other services described in the Estimate

"Site" means the location(s) at which the Software is to be installed and used and/or the Installation Services to be provided, as indicated in the Estimate

"Software" means the software (standard or bespoke) to be supplied by TWL to the Customer as specified in the Estimate

"Specification" means the written specification (if any) for the Services, Materials and/or Software referred to or contained in the Estimate, as the same may be amended from time to time in accordance with these Conditions or with the written agreement of TWL

"Third Party Software" means the third party software (if any) specified in the Estimate

"Use the Software" means load the machine executable form of the Software and store and run it on the Designated Equipment

"Use the Licensed Materials" means use the Software, use the Documentation in conjunction with the use of the Software and possess the media upon which the Software is stored and delivered to the Customer

"Website" means the website to be developed by TWL pursuant to the Contract, being a compilation of one or more pages combining text, data, sound, images or other material which is designed to be accessible over the Internet at a domain name address and which is more particularly described in the relevant Specification.

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

2 The Supply

2.1 TWL shall supply and the Customer shall purchase the Services, Materials and/or Software subject to these Conditions which shall govern the Contract to the exclusion of any other terms.

2.2 The provision of Software and Website maintenance and support services required by the Customer shall be governed by TWL's separate Support and Maintenance Agreement.

- 2.3 TWL shall only be bound by an order when written confirmation of the order has been given by TWL to the Customer.
- 2.4 No variation to these Conditions shall be binding unless approved in writing by a director of TWL.
- 2.5 Subject to any variation in accordance with clause 2.4, these Conditions embody the entire understanding of the parties and override any prior promises, undertakings or representations (though nothing contained in these Conditions shall operate to limit or exclude the liability of either party for fraud).
- 2.6 TWL shall supply the Third Party Software and shall procure that the relevant third party (“Third Party Licensor”) licenses the Third Party Software to the Customer on the standard terms of the Third Party Licensor. TWL shall be responsible for the fees charged by the Third Party Licensor to license the Third Party Software to the Customer for the number of concurrent users specified in the Estimate or Specification. TWL gives no assurances about the Third Party Software and the Customer acknowledges that its only remedy concerning any fault or problem in respect of the Third Party Software is the right it has against the Third Party Licensor under the licence of the Third Party Software.
- 2.7 Any error or omission in any sales literature, quotation, price list, invoice, specification or other document or information issued by TWL is subject to correction without any liability to TWL.
- 2.8 Where it is specified in the Estimate that TWL will provide modifications to the Website, then, subject to clause 2.9 below, TWL shall, as soon as reasonably practicable, amend, modify or replace any of the Web Pages with such new material or replacement pages as may from time to time be supplied by the Customer to TWL reserves the right to refuse to carry out such amendments, modifications or replacements where, in its reasonable opinion such amendments, modifications or replacements are or are likely to be construed as being illegal, obscene, threatening, defamatory, discriminatory, promoting illegal or unlawful activity, or are otherwise actionable or in violation of any rules, regulations or laws to which the Website is subject. TWL shall immediately notify the Customer in writing and state in reasonable detail, the reason for such refusal.
- 2.9
- 2.10 Without prejudice to clause 6.5 of the Supplemental Conditions of Hosting and SLA Agreement, TWL shall not amend, modify or replace or alter in any way any of the Web Pages at any time without the prior written approval of the Customer.

3 Orders and Specifications

- 3.1 The Customer is responsible to TWL for:
- 3.1.1 ensuring the accuracy and lawfulness of any specification, information or materials (whether in written, electronic or other form) submitted by the Customer for use in connection with the provision by TWL of the Services;
- 3.1.2 providing promptly all such information, data and assistance as TWL reasonably considers necessary for the purpose of enabling it to provide the Services.
- 3.2 The quantity, quality and description of the Services, Materials and/or Software is as set out or referred to in the Estimate. Any other descriptive material provided by TWL is provided only to assist the Customer and does not form part of the Contract.
- 3.3 The Contract may not be cancelled by the Customer save with TWL's written agreement and on terms that the Customer is to indemnify TWL 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 TWL as a result of cancellation.
- 3.4 To the extent that Specifications for the Website and, where applicable, the Software, have not been agreed as at the date of the Contract, TWL shall develop the relevant Specification(s) as the first phase of the Contract and submit the same for the Customer's written approval. The Customer shall not unreasonably withhold or delay such approval.
- 3.5 TWL shall not be obliged to undertake any further work in connection with the development of the Website and/or the Software (as the case may be) until the relevant Specification has been approved in writing by the Customer. [TWL shall provide the Customer with its revised estimate of costs for completion should the Specification be revised by Customer].
- 3.6 If at any time before the Customer's acceptance of the Website or Software, the Customer wishes to alter all or any part of the relevant Specification then the Customer shall provide TWL with full written particulars of the desired alterations and with such further information as TWL may reasonably require.
- 3.7 TWL shall then submit to the Customer as soon as reasonably practicable a full written quotation for such alterations, specifying what changes (if any) will be required to the charges payable by the Customer and to the Specification.
- 3.8 Within 7 days following the Customer's receipt of the quotation the Customer shall notify TWL whether it wishes to: accept such quotation, in which case the Contract and Specification shall be amended in accordance with it; or withdraw the proposed alterations, in which case the Contract and Specification shall continue in force unchanged.

4 Software Licence and Obligations

- 4.1 Where installation by TWL is specified in the Estimate, TWL shall install one copy of the Software in machine executable form on the Designated Equipment at the Site unless specified otherwise. Where installation is not specified, TWL shall deliver the Software on the media specified in the Estimate.
- 4.2 Where installation is provided by TWL, the Software shall be deemed accepted by the Customer upon TWL informing the Customer that the same has been successfully installed upon the Designated Equipment. Where installation is not provided by TWL, acceptance shall be deemed to take place on delivery of the Software to the Customer.
- 4.3 With effect from the Acceptance Date, TWL grants to the Customer a non-exclusive non-transferable licence to Use the Licensed Materials for its internal data processing requirements only (the “Licence”). The Customer shall not permit any third party to use the Licensed Materials nor use the same on behalf of any third party in any way. The Licence does not include authority to grant sub-licences of the Software.
- 4.4 The Licence is limited to the use of the Licensed Materials upon the maximum number of servers and with access to the same by the maximum number of client PC's or laptops (“Clients”) specified in the Estimate. The Customer acknowledges that additional licence fees are payable for additional Clients having access to the Licensed Materials.

- 4.5 Except to the extent and in the circumstances expressly permitted by law, the Customer shall not alter, modify, adapt or translate the whole or any part of the Software in any way nor permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs nor decompile, disassemble or reverse engineer the same nor attempt to do any such things.
- 4.6 The Customer shall keep possession of and control over the Licensed Materials provided to it and shall effect and maintain adequate security measures to safeguard the Licensed Materials from access or use by any unauthorised person.
- 4.7 The Customer may use the Licensed Materials only at the Site or such alternative UK location as the Customer may have notified to TWL in writing in advance of the move to the new location.
- 4.8 The use of Licensed Materials is restricted to use on or in conjunction with the Designated Equipment or such other equipment as may from time to time be approved by TWL in writing as suitable (such approval not to be unreasonably withheld).
- 4.9 The Licensed Materials and all copyright and other intellectual property rights in them shall remain the property of TWL.
- 4.10 The Customer shall notify TWL immediately if it becomes aware of any unauthorised use of the whole or part of the Licensed Materials by any person.
- 4.11 The Customer shall permit TWL to check the use of Licensed Materials by it at reasonable notice and times and for that purpose TWL, its employees and agents may enter the Customer's premises.
- 4.12 The Customer may make only so many copies of the Licensed Materials as are reasonably necessary for back-up purposes, unless stated otherwise. Such copies and, save in the case of copies comprised within system-wide back-ups ("System Copies"), the media on which they are stored shall be the property of TWL and the Customer shall ensure that such copies (other than System Copies) bear TWL's proprietary notices. The Licence shall apply to all such copies as it applies to the Licensed Materials.
- 4.13 Where any Installation Services are to be provided at the Site, the Customer shall:
- 4.13.1 provide TWL with full and safe access to the computer equipment, software and network links in respect of which the Software is or is to be used and/or the Services are to be provided;
- 4.13.2 ensure for health and safety reasons that TWL's personnel, upon or prior to entering Customer premises for the purposes of the Contract, are made familiar with the Customer's premises and safety procedures and have access, at all times while on those premises, to a member of the Customer's staff familiar with Customer premises and safety procedures;
- 4.13.3 make available to TWL such program, systems, operating manuals, facilities and information as may be necessary to enable TWL to perform its obligations under the Contract and shall, if requested by TWL, provide staff familiar with the Customer's programs and operations, which staff shall co-operate fully with TWL's personnel in the performance by TWL of the Contract;
- 4.13.4 carry out or have carried out such work in relation to the Customer's computer system in connection with which the Software is to be used as may reasonably be required by TWL in order to enable it to provide the Services.
- 4.14 The Customer shall keep TWL fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatever nature arising out of or in connection with any claim that the use by TWL of any software, facility, information or material supplied by the Customer for the purpose of enabling TWL to provide the Installation Services infringes the rights of any third party or is otherwise in breach of law.
- 4.15 If the Customer does not carry out any such work as is referred to at clause 4.11.4 above by the time TWL is scheduled to commence the relevant Services, TWL may, at its sole discretion and without prejudice to its other rights and remedies, carry out such work and charge the Customer in accordance with its standard charges and rates from time to time in force.

5 Price

- 5.1 The price for the Services, Materials and Software shall be as set out in the Estimate. Subject to clause 5.2, all prices quoted are valid for 90 days or until earlier acceptance by the Customer, after which time they may be altered by TWL without notice.
- 5.2 TWL may by giving notice to the Customer at any time before delivery, increase the price of the Software, Materials and/or Services to reflect any increase in the cost to TWL due to:
- 5.2.1 any factor beyond the reasonable control of TWL (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of production);
- 5.2.2 any change in delivery dates or performance, quantities or specifications for the Services, Materials and/or Software requested by the Customer; or
- 5.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give TWL adequate information or instructions.
- 5.3 Except where otherwise specified in the Estimate, the Customer is liable to reimburse to TWL any reasonable expenses properly incurred by TWL in performing any Services.
- 5.4 Unless otherwise indicated in the Estimate, the quoted price is exclusive of any applicable VAT or other sales tax, which the Customer shall, where applicable, pay in addition in the manner and at the rate from time to time prescribed by law.
- 5.5 All prices are subject to sight of final copy. Unless specified, prices do not allow for any keying in of copy supplied and are based on the provision of copy supplied on disk by you. Prices do not include any provision for authors' corrections made after the first complete set of proofs supplied to you at any stage during production. These would be invoiced as a separate figure along with any despatch necessary for the completion of this project.
- 5.6 Printing prices are based on today's price of paper for a delivery currently in stock. Every endeavour will be made to deliver the correct quantity ordered but quotations are conditional upon margins of five per cent for work in one colour only and 10

per cent for other work being allowed for overs or shortages the same being charged or deducted.

6 Payment

- 6.1 Except where otherwise stated in the Estimate TWL may invoice the Customer for the price of the Software, Materials and/or Services on or at any time after their delivery or, in the case of Materials or Software, after delivery is tendered by TWL in accordance with the Contract.
- 6.2 Except where otherwise stated in the Estimate, the Customer shall pay the price of the Services, Materials and Software in full within 30 days of TWL's invoice. TWL may recover the price notwithstanding that delivery may not have taken place and title in the Materials not passed to the Customer. Time of payment of the price is of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3 For projects which exceed two months duration from commencement, costs incurred will be progress invoiced at the end of each month for payment within 30 days invoice.
- 6.4 All invoices shall be paid in full without deduction or set off, in UK Sterling and by such means as TWL shall determine from time to time.
- 6.5 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy of TWL may:
- 6.5.1 cancel the Contract pursuant to clause 12.1.1 below or suspend the Services and any further deliveries to the Customer;
- 6.5.2 appropriate any payment made by the Customer to such of the Materials, Software and/or Services (or materials, software or services supplied under any other contract between the Customer and TWL) as TWL may think fit (notwithstanding any purported appropriation by the Customer); and
- 6.5.3 charge the Customer interest (before and after any judgment) on the amount unpaid, at the rate of 4% per annum above Barclays Bank plc 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).

7 Delivery

- 7.1 Delivery of Materials or Software is made by the Customer collecting the Materials or Software from TWL's premises after TWL has notified the Customer that the same are ready for collection or, if some other place for delivery is agreed in writing by TWL, by TWL delivering the Materials or Software to that place (whether in hard form, electronically or otherwise). Delivery of Services takes place upon completion of the performance of such Services.
- 7.2 Dates quoted for delivery of Materials or Software or performance of Services (where relevant) are approximate only and TWL is not liable for delay in delivery or performance however caused. Materials or Software may be delivered in advance of the quoted delivery date upon TWL giving reasonable notice to the Customer. Time of delivery or performance shall not be of the essence of the Contract.

Delivery and Acceptance of the Website

- 7.3 TWL shall undertake all Website development work on its own servers. The Customer shall accept the Website upon TWL demonstrating that the Website (as installed on TWL's servers) complies, in all material respects, with its Specification.
- 7.4 Following acceptance of the Website, TWL shall deliver to the Customer a copy of the Website on CD-Rom (or such other computer media as the Customer may reasonably request), along with a list detailing any special configurations required to host the Website. Where the Estimate indicates that TWL will provide such a Service, TWL shall install the Website on the Equipment.

Delivery and Acceptance of the Software

- 7.5 Where the Estimate indicates that TWL will provide such a Service, TWL shall install the Software on the Equipment. Where installation is not to be undertaken by TWL, TWL shall deliver the Software to the Customer on the media and together with any operating manuals specified in the Specification.
- 7.6 The Customer shall accept the Software upon TWL demonstrating that the Software (as installed on TWL's servers) complies, in all material respects, with its Specification. If at any time the Customer shall commence live running of the Software or any part of the Software, then the Customer shall be deemed to have accepted the Software.

Risk and Title

- 8** Risk in Materials passes to the Customer:
- 8.1
- 8.1.1 where delivery is to take place at TWL's premises, when TWL notifies the Customer that the Materials are available for collection; or
- 8.1.2 where delivery is to take place other than at TWL's premises, on delivery or, if the Customer wrongfully fails to take delivery of the Materials, when TWL tenders delivery.
- 8.2 Notwithstanding delivery, passing of risk in the Materials or any other provision of these Conditions, title in Materials does not pass to the Customer until TWL has received in cash or cleared funds full payment of the price of the Materials and/or Services and all other materials and/or services to be supplied by TWL to the Customer for which payment is then due.
- 8.3 Until title in the Materials passes to the Customer, TWL may require the Customer to deliver up the Materials to TWL and, if it fails to do so, may enter upon any premises of the Customer or third party where the Materials are then kept and repossess the same.
- 8.4 The Customer may not pledge or charge by way of security any Materials owned by TWL, but if the Customer does so all moneys owing by it to TWL become (without prejudice to any other right or remedy of TWL) due and payable.

Intellectual Property Rights

- 9.1 Upon payment by the Customer of all sums due to TWL under the Contract, all Intellectual Property Rights in those Materials produced specifically in connection with the development of the Website (and therefore excluding all generic and pre-existing software, tools, designs and other materials utilised by TWL in connection with services performed for any third party ("Generic Items")) shall belong to the Customer. TWL shall, at the request and expense of the Customer, execute all such documents and do all such things as may be necessary to vest such Intellectual Property Rights in the Customer.
- 9.2 With effect from delivery of the Website (and except as otherwise indicated in the Estimate), TWL grants to the Customer a perpetual, non-exclusive, royalty-free licence (without the right to grant sub-licences) of all Intellectual Property Rights in the Generic Items in so far as is necessary to enable the Customer to operate, maintain and update the Website.
- 9.3 With effect from acceptance by the Customer of the Software, TWL grants to the Customer a perpetual, non-exclusive, non-transferable royalty-free licence (without the right to grant sub-licences) to use the Software in connection with the operation, maintenance and updating of the Website.
- 9.4 For the avoidance of doubt, nothing in clause 9.1 shall prevent TWL from using, in the furtherance of its normal business, website development tools, techniques and skills, data processing techniques, software programming or development techniques, ideas and know-how which existed prior to the Contract or were gained during the performance of the Services.

10

Warranties and Liability

- 10.1 TWL warrants that it will provide the Services (including the Installation Services) with reasonable care and skill. Any applicable supplemental warranties are set out in TWL's supplemental conditions relevant to the Materials, Software or Services to be supplied.
- 10.2 TWL warrants to the Customer that:
- 10.2.1 upon acceptance, each of the Website and the Software will, when properly used on the Equipment or, where appropriate, the Designated Equipment, comply in all material respects with its Specification;
- 10.2.2 as at delivery, the media on which the Website and Software are provided will be free from defects in materials or workmanship.
- 10.3 Without prejudice to clause 10.2.1 above, TWL does not warrant that the Software will meet the Customer's data processing requirements or that the operation of either the Website or the Software will be error-free.
- 10.4 The Customer shall give notice to TWL as soon as it is reasonably able upon becoming aware of a breach of the warranty contained in clause 10.2.
- 10.5 Subject to the Customer complying with clause 10.4 and providing (where possible) a documented example of the relevant defect or failure, TWL shall remedy any breach of the warranties set out at clauses 10.1 and 10.2 by the provision of remedial services (including at TWL's option replacement of defective items) free of charge. TWL shall have no liability or obligation under that warranty or obligation other than to remedy breaches of it in accordance with this clause 10.5.
- 10.6 Except as expressly provided in the Contract, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the Services, Materials or Software are excluded to the fullest extent permissible by law.
- 10.7 Except in the case of death or personal injury caused by TWL's negligence (in respect of which TWL's liability shall be unlimited) and except for any other matters for which TWL's liability may not by law be restricted or excluded, TWL's total liability in respect of any contractual breach or representation, statement or tortious act or omission arising under or in connection with the Contract (a "Default") shall not exceed:
- 10.7.1 in the case of a Default relating to Services comprising website hosting or software support and maintenance, the total sums paid or payable by the Customer in the preceding 12 month period in respect of those Services;
- 10.7.2 in all other cases, one and a half times the total sums paid or payable by the Customer to TWL under the Contract.
- 10.8 Notwithstanding anything else contained in these Conditions (and without limiting TWL's liability in respect of injury to or death of any person caused its negligence) TWL shall not be liable to the Customer for:
- 10.8.1 any loss of profits, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) whether arising from negligence, breach of contract or otherwise howsoever;
- 10.8.2 any defect in the Materials, Software and/or Services arising from any drawing, design, specification or other information supplied by the Customer, whether in written, electronic or other format;
- 10.8.3 any hacking or hacks which occur and the effects of these in respect of the Customer's business and data, systems and/or the Customer's Material and/or any Website PROVIDED THAT TWL shall use its reasonable endeavours to ensure that all services provided by it are free from third party influences at the time of supply.
- 10.9 If a number of Defaults give rise to substantially the same loss then they shall be regarded as the same Default for the purpose of calculating TWL's maximum liability pursuant to clause 10.7.
- 10.10 Any computer hardware or other equipment purchased by TWL in connection with the provision of the Services shall be purchased by TWL as the Customer's agent and, accordingly, TWL shall have no liability to the Customer in respect of such hardware or other equipment.
- 10.11 TWL shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing, or failure to perform any of TWL's obligations under the Contract if the delay or failure was due to any cause beyond TWL's reasonable control including but not limited to an action of a third party or the Customer, unlawful or unauthorised use of or access to TWL's systems, governmental intervention, labour disputes or the breakdown or interruption of third party systems or machinery.
- 10.12 Whilst TWL has taken reasonable steps to prevent the introduction of computer viruses, it cannot guarantee that viruses will not enter the Customer's systems through, via or as a result of TWL's systems or the provision of the Services, the Software and/or Materials. Accordingly, TWL shall not have any liability whatsoever (whether for breach of contract, negligence or otherwise) for any such entry where reasonable steps have been taken by or on behalf of TWL to prevent the same.

- 10.13 Notwithstanding the other provisions of this condition 10, TWL does not warrant that any concepts supplied by TWL to the Customer (in respect of pitches, tenders or otherwise) do not infringe any existing third party intellectual property rights and TWL shall not be liable for any damages, costs or losses whether direct or indirect (and including, without limitation, loss of profits, loss of business and loss of goodwill) arising out of any claim by any third party relating to the concepts proposed by TWL.
- 10.14 In relation to the Software, TWL shall not be liable to the Customer for any loss arising out of any failure by the Customer to comply with its obligations under the Contract or resulting from:
- 10.14.1 use of the whole or any part of the Software with any equipment and/or software not specified in the Specification or approved by TWL for use in connection with the Software;
- 10.14.2 repair, adjustment, alteration or modification of any part of the Software not undertaken by TWL or its sub - contractor;
- 10.14.3 operator error, failure or error in operating or other software or any defect in the Designated Equipment;
- 10.14.4 Customer failure to keep restorable back-up and/or security copies of data.

11 IPR Indemnity

- 11.1 TWL shall indemnify the Customer against any claim that the Customer's normal use or possession of the Materials or the Software in accordance with the Contract infringes the intellectual property rights of any third party PROVIDED THAT:
- 11.1.1 TWL is given immediate and complete control of such claim;
- 11.1.2 the Customer does not prejudice TWL's defence of such claim;
- 11.1.3 the Customer gives TWL all reasonable assistance with such claim;
- 11.1.4 the claim does not arise as a result of the use of the Software in combination with equipment or programs not specified in the Specification or approved in writing by a director of TWL;
- 11.1.5 the claim does not arise as a result of the inclusion within the Materials or Software of materials provided by the Customer for such inclusion.
- 11.2 TWL shall have the right to replace or modify all or any part of the Materials or Software in order to avoid a third party infringement claim or if this cannot be achieved on terms which TWL considers reasonable, take back the relevant Materials or the Software and refund the sums paid by the Customer under the Contract in respect of the supply of those Materials or the Software.
- 11.3 This clause 11 states the entire liability of TWL to the Customer in respect of any infringement of the intellectual property rights of any third party.
- 11.4 The Customer shall indemnify TWL and keep TWL fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatever nature arising out of or in connection with any claim that the use by TWL or its sub-contractors of any software, information or material supplied by the Customer for the purpose of enabling TWL to develop the Website or the Software infringes the intellectual property or other rights of any third party.

12 Termination

- 12.1 TWL may terminate the Contract forthwith by notice in writing to the Customer if the Customer:
- 12.1.1 fails to pay any sum due under the Contract by the due date;
- 12.1.2 commits a breach of any other term of the Contract provided that if the breach is capable of remedy (being actual remedy as opposed to remedy by payment of damages or compensation) the notice shall only be given if the Customer shall not have remedied the same within 30 days of having been given notice in writing specifying the breach and requiring it to be remedied; or
- 12.1.3 has a winding up petition presented against it and does not make an application to set aside the same within 7 days or goes into liquidation whether compulsorily or voluntarily (unless as part of a bona fide scheme for amalgamation or reconstruction first approved in writing by TWL), becomes subject to an administration order, has a receiver or administrative receiver appointed over or encumbrancer take possession of the whole or any part of its assets, compounds with its creditors or any class of the same, ceases to carry on its business or threatens to cease the same or becomes unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986; or
- 12.1.4 being an individual, has a bankruptcy order made against him or, being a partnership, has a bankruptcy order made against any of the partners or a notice served by a partner for the dissolution of the partnership.
- 12.2 In the event of any termination under clause 12.1, then if any Materials or Software have been delivered or Services supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12.3 Termination of the Contract for any reason shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.4 Upon termination of the Contract for any reason, the Licence granted at clause 4.3 above shall also terminate and the Customer shall immediately cease using the Software. In addition, the Customer shall, at TWL's option, either return to TWL or destroy all copies of such Software and associated Documentation. If the Customer so wishes to have rights and ownership of the source code for that particular application once terminated then this will be, by separate negotiation with TWL.

13 E-commerce Transactions

- 13.1 Unless agreed in writing by a director of TWL, TWL's representatives are not authorised to enter into legally binding purchase and sale obligations with the Customer by e mail or other electronic communication ("Electronic Communication").

Where such agreement is given, the following provisions of this clause 12 shall apply. For the purposes of this clause 13, the “originating party” will mean the party transmitting an Electronic Communication and the “receiving party” will mean the party receiving such a communication.

- 13.2 The Customer shall provide and maintain the equipment, software, services and testing facilities necessary for it to effectively and reliably transmit and receive Electronic Communications.
- 13.3 Either party may use a third party service provider for network services provided that the other party is given sixty (60) days prior written notice of any changes to such services.
- 13.4 An Electronic Communication shall be deemed received upon arrival at the receiving party’s mailbox at the Internet address notified to the receiving party by the originating party from time to time or, where TWL is the receiving party, when the Electronic Communication is accessed by it in intelligible form. The receiving party shall promptly notify the originating party if an Electronic Communication is received in unintelligible form providing that the originating party can be identified. In the absence of such notice, the originating party’s record of the contents of such Electronic Communication will prevail.

14 Confidentiality and Personal Data

- 14.1 Each party shall keep confidential all information obtained from the other pursuant to or in contemplation of the Contract, shall use the same only for the purposes of the Contract and shall not disclose such information to any person (except to its own employees or, in the case of TWL, its sub-contractors and then only to those employees or sub-contractors who need to know the same) without the other’s prior written consent. In addition, the Customer shall keep confidential and not disclose (except as mentioned) any terms of the Contract.
- 14.2 The obligations of the parties pursuant to clause 14.1 shall not extend to any information which was rightfully in the possession of the receiving party (and at its free disposal) prior to the commencement of negotiations leading to the Contract; which is already public knowledge or becomes so at a future date otherwise than as the result of a breach of this clause 11; which is trivial or obvious; or whose disclosure is required (and to the extent that it is required) by law.
- 14.3 Where personal data (as defined in section 1(1) of the Data Protection Act 1998) is disclosed to TWL and processed by TWL as part of the performance of the Services, the Customer shall be responsible for obtaining all necessary consents and approvals to ensure that such processing is carried out in accordance with the Act and shall provide evidence of such consents and approvals to TWL on request.

15 General

- 15.1 During the period during which TWL is providing any Services to the Customer and for a period of six months thereafter the Customer shall not (whether personally or by its agent and whether for itself or on behalf of any other person, firm or company) induce or seek to induce any employee of TWL to leave TWL’s employment.
- 15.2 TWL may freely assign or sub-contract all or any of its rights and obligations under this Contract. The Customer may not assign, otherwise transfer, charge, allow any third party to benefit from or deal in any other manner with the Contract or any of its rights under it without TWL’s prior written consent.
- 15.3 All notices sent under the Contract shall be in writing and in English and delivered by hand or sent by guaranteed mail or fax to the recipient at the address set out in the Estimate or such other address as one party may notify in writing to the other. A notice shall be deemed to have been received if delivered, upon delivery; if posted, on the second working day following posting; and if faxed, when sent to the recipient’s fax number PROVIDED THAT a copy of the fax is sent by guaranteed mail or delivered by hand as soon as practicable after transmission.
- 15.4 No waiver by TWL of any breach of the Contract by the Customer is considered as a waiver of any subsequent breach of the same or any other provision.
- 15.5 If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question is not affected.
- 15.6 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.7 The Contract is governed by the laws of England. The Customer shall submit to the non-exclusive jurisdiction of the English courts.

TWL Special Conditions

These Special Conditions, together with our general Conditions, shall govern all supplies to Customers by TWL of mail order, despatch, direct mailing, digital print and related services and any other services which TWL may from time to time agree to provide to the Customer.

The Customer's purchase of Goods and/or Services shall be subject to TWL's Conditions and these Special Conditions and the Customer is advised to read both documents together prior to placing an Order.

Unless otherwise stated in these Special Conditions, the defined terms in TWL's general Conditions shall apply to these Special Conditions.

These Special Conditions are supplemental to TWL's general Conditions. In the event of any conflict or inconsistency between these Special Conditions and TWL's general Conditions, TWL's general Conditions shall prevail but only to the extent of such conflict or inconsistency.

1 Definitions and Interpretation

1.1 In these Conditions:

“**Customer**” means the person accepting the Quotation or submitting the Order, as the case may be;

“**Conditions**” means the conditions set out in this document and (unless the context otherwise requires) includes any special conditions appearing on the Quotation or Order, as the case may be;

“**Contract**” means the contract for the supply by TWL to the Customer of the Services;

“**Order**” means the order for the supply of the Services submitted by the Customer verbally or in writing which is accepted by TWL verbally or in writing;

“**Customer Materials**” means any artwork, designs, drawings, written description, photograph, digital artwork, electronic data or other materials provided to TWL by the Customer in connection with which the Services are to be provided;

“**Printed Stock**” means materials printed or produced by TWL in carrying out the Services and delivered in accordance with the Specification;

“**Quotation**” means the written quotation provided by TWL for the supply of the Services;

“**Services**” means any mail order, despatch, direct mail, digital print and related services and any other services which the Company is to provide to the Customer in accordance with these Conditions;

“**Specification**” means the written specification (if any) for the Services and Printed Stock referred to or contained in the Quotation or Order (as the case may be) as the same may be amended from time to time in accordance with these Conditions or with the written agreement of TWL.

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

2 The Supply

2.1 TWL shall supply and the Customer shall purchase the Services subject to these Conditions which shall govern the Contract to the exclusion of any other terms. The Contract shall be formed once the Quotation has been accepted by the Customer or the Customer's Order for Services accepted by TWL, as the case may be. The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from the Contract.

2.2 No variation to these Conditions shall be binding unless approved in writing by a director of TWL.

2.3 Any advice or recommendation given by TWL or its employees or agents to the Customer as to the use or scope of the Services and/or Printed Matter which is not confirmed in writing by TWL is acted upon at the Customer's own risk, and accordingly TWL is not liable for any advice or recommendation not so confirmed.

2.4 Any error or omission in any sales literature, quotation, price list, invoice, specification or other document or information issued by TWL is subject to correction without any liability to TWL reserves the right to reject any Customer Materials or other materials supplied or specified by the Customer which appear to it to be unsuitable for use in connection with the Services or for the purposes intended. TWL shall not be obliged to check or verify the quality, sufficiency or suitability of any Customer Materials and additional costs incurred by TWL as a result of Customer Materials being found to be unsuitable during production may be charged to the account of the Customer by TWL.

3 Quotations, Orders and Specifications

3.1 The Customer is responsible to TWL for:

3.1.1 ensuring the accuracy and lawfulness of any Order, Customer Materials and other information or materials submitted by it which are either referred to in the Quotation or Order, as appropriate (including any Specification) or which are otherwise submitted in connection with the Services, and

3.1.2 giving TWL sufficient quantities of Customer Materials and other necessary information relating to the Services within a sufficient time to enable TWL to perform the Contract in accordance with its terms.

3.2 TWL can accept no liability whatsoever for any discrepancy in Customer Materials or other materials supplied by the Customer and in particular any shortage of Customer Materials or other material delivered to TWL will be the responsibility of the Customer and any resulting additional costs arising as a result of the shortage will be added to the Customers account.

3.3 The quantity, quality and description of the Services is set out in the Quotation or Order, as the case may be.

3.4 The Customer warrants to TWL that to the best of its knowledge and belief TWL's use, distribution or display of the Customer Materials and Printed Stock will not infringe any intellectual property or other right of any other person, give rise to

any tortious liability (including but not limited to negligence), nor violate any applicable law or regulation wherever or howsoever arising.

- 3.5 If TWL has reasonable grounds for believing that the Customer is in breach of the warranty given in condition 3.4 or becomes aware of any actual or potential violation of any third party rights or applicable law then, without prejudicing its other rights or remedies:
- 3.5.1 TWL may itself or may require the Customer to make such changes to the Customer Materials and Printed Stock as TWL considers necessary in the circumstances;
- 3.5.2 TWL may suspend the provision of the Services until it is satisfied that changes necessary to minimise the risk of any liability accruing to it have been taken; and
- 3.5.3 the Customer shall fully indemnify TWL for all loss, damages, costs and expenses incurred by TWL in connection with any claim arising.
- 3.6 The Customer will notify TWL immediately if it becomes aware of any circumstance which does or is likely to constitute a breach of the warranty given in condition 3.3.
- 3.7 TWL may make any changes to the Specification which TWL considers necessary for the same to conform with any applicable statutory or EU requirements or, in the case of Customer Materials and Printed Stock, which do not materially alter their quality.
- 3.8 As the case may be, the Quotation once accepted by the Customer or the Customer's order for Services once accepted by TWL may not be cancelled by the Customer save with TWL's written agreement and on terms that the Customer indemnifies TWL 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 TWL as a result of cancellation.

4 Price

- 4.1 The price of the Services shall be as set out on the Quotation or by the Order, as appropriate. Subject to clause 4.2, all prices quoted are valid for 3 months or until earlier acceptance by the Customer, after which time they may be altered by TWL without notice.
- 4.2 TWL may increase the price of the Services to reflect any increase in the cost to TWL due to:
- 4.2.1 any factor beyond the reasonable control of TWL (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of production);
- 4.2.2 any change in delivery dates or performance, quantities or specifications for the Services or Printed Stock requested by the Customer; or
- 4.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give TWL adequate information or instructions.
- 4.3 The Customer is liable to reimburse to TWL any reasonable expenses properly incurred by it in performing any Services.
- 4.4 The quoted price is exclusive of any applicable VAT or other sales tax which the Customer is liable to pay to TWL.

5 Payment

- 5.1 Save where otherwise stated in the Quotation or the Order (as the case may be), TWL may invoice the Customer for the price of the Services:
- 5.1.1 on or at any time after their delivery;
- 5.1.2 when the Printed Stock has been produced and is being held by TWL pending delivery in accordance with the Customer's instructions; or
- 5.1.3 on a "progress invoicing" basis in accordance with TWL's policies notified to the Customer from time to time.
- 5.2 Save where otherwise stated in the Quotation or the Order (as the case may be), the Customer will pay the price of the Services in full within 30 days of TWL's invoice. TWL may recover the price notwithstanding that delivery or performance may not have taken place or been completed and title to Printed Stock not passed to the Customer. Time of payment of the price is of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 All invoices of TWL shall be paid in full without deduction or set off and by such means as TWL shall determine from time to time.
- 5.4 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy of TWL may:
- 5.4.1 cancel the Contract or suspend the Services, the production of Printed Stock and any further deliveries to the Customer;
- 5.4.2 appropriate any payment made by the Customer to such Services and/or Printed Stock (or services or materials supplied under any other contract between the Customer and TWL) as TWL may think fit (notwithstanding any purported appropriation by the Customer); and
- 5.4.3 charge the Customer interest (before and after any judgment) on the amount unpaid, at the rate of 4% per annum above National Westminster Bank plc 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, Risk and Title

- 6.1 Delivery of Services takes place upon completion of the performance of such services. Delivery of Printed Stock is made by the Customer collecting such stock from TWL's premises or, where some other place of delivery is agreed by TWL, by TWL despatching the Printed Stock to that place whether in hard form, electronically or otherwise.

- 6.2 Where delivery is to be effected by the Customer collecting the Printed Stock from TWL's premises and the Customer does not collect the same once made available for collection, TWL may charge the Customer for the costs of storage and, if not collected within • weeks of the same being made available, TWL may dispose of the same and recover any costs relating to such disposal from the Customer.
- 6.3 Dates quoted for the performance of the Services and delivery of Printed Stock are approximate only and TWL is not liable for delay in delivery or performance however caused. Time of delivery or performance shall not be of the essence of the Contract.
- 6.4 Where the Services are to be delivered in instalments, each delivery constitutes a separate contract and failure by TWL to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments does not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.5 Risk in Printed Stock passes to the Customer:
- 6.5.1 where that stock is delivered by the Customer collecting the same from TWL's premises, when TWL notifies the Customer that the stock is available for collection; or
- 6.5.2 where that stock is delivered other than by the Customer collecting the same from TWL's premises, on delivery or, if the Customer wrongfully fails to take delivery of the stock, when TWL has tendered delivery.
- 6.6 Notwithstanding delivery, passing of risk in Printed Stock or any other provision of these Conditions, title in Printed Stock does not pass to the Customer until TWL has received in cash or cleared funds full payment of the price of the Services and all other materials and/or services supplied or to be supplied by TWL to the Customer for which payment is then due.
- 6.7 Until title in Printed Stock passes to the Customer, TWL may require the Customer to deliver up that Printed Stock to TWL and, if it fails to do so, may enter upon any premises of the Customer or third party where that stock is then kept and repossess the same.
- 6.8 The Customer may not pledge or charge by way of security any Printed Stock owned by TWL, but if the Customer does so all moneys owing by it to TWL become (without prejudice to any other right or remedy of TWL) due and payable.
- 6.9 TWL can accept no liability whatsoever in respect of loss or damage of any Customer Materials save where this has been caused by the negligence of the Company. The Customer is responsible for making and keeping back-up copies of information provided to TWL or made available to it in connection with the provision of any Services and accordingly TWL shall have no liability for the recovery and/or replacement of Customer Materials or other materials in connection with the provision of the Services.
- 6.10 TWL may charge the Customer for the costs of storage of Customer Materials or other materials if not collected within • weeks of the conclusion of the Contract and TWL may dispose of the same and recover any costs relating to such disposal from the Customer.
- 6.11 All film, film settings, negatives, positives, plates, dyes, tape matter (metal or film), artwork (including digital artwork), sketches, samples and original designs of any kind, moulds, stereotypes, electrotypes and the like used or created by TWL in connection with the Services and all copyright, design right and other rights of any nature in the same (but excluding any Customer Materials) shall remain TWL's property at all times whether or not the work entailed in the production of such items is charged separately by TWL.
- 6.12 Any subsequent utilisation of the items in clause 6.11 will be the subject of a separate contract.

7 Warranties and Liability

- 7.1 TWL warrants that the Services and/or Printed Stock shall correspond in all material respects with the Specification (if any) as at delivery. Where there is no Specification then TWL warrants that the Services will be performed with reasonable skill and care. However, TWL is under no liability:
- 7.1.1 for any defect in the Services or Printed Stock arising from any Customer Materials or any other drawing, design or specification supplied by the Customer;
- 7.1.2 where the Customer fails to follow TWL's instructions or recommendations in connection with the provision of the Services;
- 7.1.3 if the price for the Services has not been paid by the due date for payment.
- 7.2 Subject as provided in these Conditions and except where the Services are supplied to a person dealing as a consumer (defined in Unfair Contract Terms Act 1977), all terms implied by law are excluded to the fullest extent permitted.
- 7.3 Any claim by the Customer based on a defect in quality of the Services or Printed Stock or failure to correspond with specification (a "Claim") must (whether or not delivery is refused by the Customer) be notified in writing to TWL within 7 days after completion or delivery, as appropriate, of the same. If the Customer does not notify TWL in accordance with this condition then: (a) TWL will have no liability for any such defect or failure, and (b) the Customer is bound to pay the price as if the Services had been performed and any Printed Stock delivered in accordance with the Contract.
- 7.4 Where a valid Claim is notified to TWL in accordance with these Conditions, TWL may replace the Printed Stock or re-perform the Services free of charge or refund to the Customer the price of the Services (or an appropriate proportion of the price), but shall have no further liability to the Customer.
- 7.5 Save where death or personal injury is caused by TWL's negligence, TWL is not liable to Customer by way of representation (unless fraudulent), common law duty or under any express or implied term of the Contract, for any indirect, special or consequential loss or damage whether for loss of profit or otherwise (whether caused by the negligence of TWL, its employees or agents or otherwise) arising in connection with the supply of the Services or Printed Stock or their use by the Customer. Save where death or personal injury is caused by TWL's negligence which liability is unlimited, the entire liability of TWL in connection with the Contract shall not exceed the amount paid by the Customer under the Contract, except as expressly provided in these Conditions.
- 7.6 TWL's obligations under the Contract will be suspended to the extent that it is prevented or hindered from complying by any

cause beyond its reasonable control including but not limited to an action of a third party or the Customer, unlawful or unauthorised use of or access to TWL's systems, governmental intervention, labour disputes or the breakdown or interruption of third party systems or machinery. TWL will use reasonable endeavours to remedy such cause and will resume the performance of such obligations as soon as reasonably possible after the removal of the cause.

7.7 Whilst TWL has taken reasonable steps to protect its systems from the introduction of computer viruses, it cannot guarantee that viruses will not enter the Customer's systems through, via or as a result of TWL's systems or the provision of the Services. Accordingly, TWL cannot accept any liability whatsoever (whether for breach of contract, negligence or otherwise) for any such entry where reasonable steps have been taken by or on behalf of TWL to prevent the same.

8 Insolvency of the Customer

8.1 Without prejudice to any other right or remedy available to TWL, TWL may cancel the Contract or suspend any further deliveries under the Contract if:

8.1.1 the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (other than by way of amalgamation or reconstruction);

8.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the Customer's undertaking;

8.1.3 the Customer ceases, or threatens to cease, to carry on business; or

8.1.4 TWL reasonably believes that any of the above events is about to occur.

8.2 Where any of the circumstances in clause 8.1 apply then if any Printed Stock has been delivered or Services supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

9 E-commerce Transactions

9.1 To the extent permitted by English law, TWL and the Customer may conduct transactions using an electronic commerce approach under which they will electronically transmit and receive legally binding purchase and sale obligations including electronic credit entries transmitted by the Customer to TWL's bank account in such manner as may be notified by TWL to the Customer from time to time ("Electronic Communications"). For the purposes of this condition 9, the "originating party" will mean the party transmitting an Electronic Communication and the "receiving party" will mean the party receiving such a communication.

9.2 If the parties choose to conduct transactions pursuant to the provisions of condition 9.1 then:

9.2.1 the Customer will provide and maintain the equipment, software, services and testing facilities necessary for it to effectively and reliably transmit and receive Electronic Communications;

9.2.2 either party may use a third party service provider for network services provided that the other party is given sixty (60) days prior written notice of any changes to such services;

9.2.3 an Electronic Communication will be deemed received upon arrival at the receiving party's mailbox at the internet address notified to the receiving party by the originating party from time to time or, where TWL is the receiving party, when the Electronic Communication is accessed by it in intelligible form. The receiving party will promptly notify the originating party if an Electronic Communication is received in an unintelligible form providing that the originating party can be identified. In the absence of such notice, the originating party's record of the contents of such Electronic Communication will prevail;

9.2.4 each party will authenticate documents using a digital signature or User ID (an "authentication"), as specified by TWL, and will maintain security procedures to prevent its unauthorised use. Each party agrees that any authentication contained in any transmitted document will be sufficient to confirm such party originated such Electronic Communication;

9.2.5 each party shall furnish to the other a list of individuals authorised by it to transmit Electronic Communications and the appropriate authentication. Each party will maintain security provisions to prevent the unauthorised disclosure of such information.

10 General

10.1 TWL may freely assign or sub-contract all or any of its rights and obligations under this Contract.

10.2 Notices required or permitted to be given under these Conditions must be in writing and addressed to the relevant party at its registered office or principal place of business.

10.3 No waiver by Company of any breach of the Contract by the Customer is considered as a waiver of any subsequent breach of the same or any other provision.

10.4 If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question is not affected.

10.5 The Contract is governed by the laws of England. The Customer will submit to the non-exclusive jurisdiction of the English courts.