

DIES DIRECT

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

The Customer's attention is particularly drawn to the provisions of clause 3.3, 6.1.5 and clause 9.

1. INTERPRETATION

In these Conditions, the following definitions apply:

Dies Direct	is a division of a company registered in England and Wales with company number 2402690.
Business Day	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
Conditions	these terms and conditions as amended from time to time in accordance with clause 12.8.
Contract	the contract between Dies Direct and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
Customer	the person or firm who purchases the Goods and/or Services from Dies Direct.
Customer Materials	such artwork, information and materials as are provided by the Customer for the provision of the Goods and/or Services.
Delivery	delivery to the Customer pursuant to clause 3.
Goods	the goods (or any part of them) set out in the Order
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 Dies Direct's quotation as the case may be, including where relevant, the Specification.
Services	the services, including deliverables, supplied by Dies Direct to the Customer as set out in the Specification.
Specification	in relation to Goods, any specification for the Goods (including any relevant plans or drawings) that is provided by Dies Direct to the Customer (or vice versa), and in relation to Services, the description or specification for Services provided by Dies Direct to the Customer (or vice versa).

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from Dies Direct in accordance with these Conditions.

2.2 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 Dies Direct which is not set out in the Contract. Any samples shall not form part of the Contract or any other contract between Dies Direct and the Customer for the supply of the Goods and/or Services.

2.3 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.

2.4 All these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. **DELIVERY OF GOODS AND SERVICES**

3.1 Unless otherwise specified in the Order Dies Direct shall despatch the Goods as soon as reasonably practical following manufacture.

3.2 Delivery of the Goods shall be completed on the completion of loading of the Goods onto the delivery vehicle at Dies Direct's premises.

3.3 ANY DATES QUOTED FOR DELIVERY OF THE GOODS OR PROVISION OF THE SERVICES ARE APPROXIMATE ONLY AND THE TIME OF DELIVERY IS NOT OF THE ESSENCE. DIES DIRECT SHALL NOT BE LIABLE FOR ANY DELAY IN DELIVERY OF THE GOODS.

3.4 Dies Direct 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.

4. **QUALITY OF GOODS AND SERVICES**

4.1 Dies Direct may, at its discretion, provide the Customer with artwork proofs or samples of the Goods for approval. If the Customer accepts the quality of the proof or sample, or does not notify Dies Direct within a reasonable period of time but in any event no later than 48 hours after receipt of the proofs or samples ("the Relevant Period") that the proof or sample does not comply with the warranties contained in clause 4.2, then the Goods shall be deemed to have complied with the warranty contained in clause 4.2 to the extent that they are consistent with the proof or sample. It will be the Customer's responsibility to ensure that any third party has sight of the proof or sample during the Relevant Period in order to establish its compliance with the warranties contained in clause 4.2. If the Customer notifies Dies Direct in writing during the Relevant Period (but not later) that it requires a longer period to seek the approval of a third party then Dies Direct may, at its reasonable discretion, allow the Customer a longer period to obtain such approval, such period not to be any longer than 14 days after the Customer's receipt of the proofs or samples.

4.2 Subject to clauses 4.1 and 4.4 Dies Direct warrants that:

(i) on Delivery the Goods shall be free from material defects in design, material and workmanship; and

(ii) the Services will be provided using reasonable care and skill.

4.3 Subject to clause 4.1 and 4.4, if:

4.3.1 the Customer gives notice in writing immediately after discovery, and in any event within 7 days of Delivery of the Goods and/or provision of the Services that some or all of the Goods and/or Services do not comply with the warranty set out in clause 4.2 and

4.3.2 Dies Direct is given a reasonable opportunity of examining such Goods and the Customer (if asked to do so by Dies Direct) returns such Goods to Dies Direct's place of business at the Customer's cost;

Dies Direct shall, at its option, repair or replace the defective Goods or re-perform the Services, or refund the price of the defective Goods or Services in full.

4.4 Dies Direct shall not be liable for the Goods' or Services' failure to comply with the warranties in clause 4.2 if:

4.4.1 the Customer makes any modification of such Goods after giving a notice in accordance with clause 4.3;

4.4.2 the defect arises because the Customer failed to follow Dies Direct's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice;

4.4.3 the defect arises as a result of Dies Direct following any drawing, design or specification supplied by the Customer;

4.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

4.5 Except as provided in this clause 4, Dies Direct shall have no liability to the Customer in respect of the Goods' or Services' failure to comply with the warranties set out in clause 4.2.

4.6 The terms of these Conditions shall apply to any repaired or replacement Goods or Services supplied by Dies Direct under clause 4.3.

4.7 Dies Direct shall have the right to make any changes to the Goods or Services which do not materially affect the nature or quality of the Goods or Services, and Dies Direct shall notify the Customer in any such event.

5. **TITLE AND RISK**

5.1 The risk in the Goods shall pass to the Customer on completion of Delivery.

5.2 Title to the Goods shall not pass to the Customer until Dies Direct has received payment in full (in cash or cleared funds) for:

5.2.1 the Goods and Services (as appropriate); and

5.2.2 any other goods that Dies Direct has supplied to the Customer in respect of which payment has become due.

- 5.3 Until title to the Goods or Services has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as Dies Direct's bailee but the Customer may resell or use the Goods in the ordinary course of its business.
- 5.4 Until title to the Goods has passed to the Customer, Dies Direct shall be entitled to demand any of the proceeds of sale of the Goods that the Customer receives from the sale of the Goods to any third party, up to the amount due under the Contract.
- 5.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.12, or Dies Direct reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, and without limiting any other right or remedy Dies Direct may have, Dies Direct 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.

6. CUSTOMER'S OBLIGATIONS

6.1 The Customer shall:

- 6.1.1 ensure that the terms of the Order and the information it provides in the Specification are complete and accurate;
- 6.1.2 co-operate with Dies Direct in all matters relating to the Goods and Services;
- 6.1.3 ensure that all artwork or copy supplied to Dies Direct is clear and legible.
- 6.1.4 approve, or mark-up, any proofs or samples provided to the Customer by Dies Direct promptly upon request, and in any event in accordance with clause 4.1;
- 6.1.5 ensure that it is satisfied with the quality of the Goods or Services provided under the Contract before using the Goods, having consulted with any other relevant third party who has an interest in the Goods and/or Services.

6.2 If Dies Direct's performance of any of its obligations in respect of the Goods or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- 6.2.1 Dies Direct shall without limiting its other rights or remedies have the right to suspend performance of the Services or supply of the Goods until the Customer remedies 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 Dies Direct's performance of any of its obligations;
- 6.2.2 Dies Direct shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Dies Direct's failure or delay to perform any of its obligations as set out in this clause 6.2; and

6.2.3 the Customer shall reimburse Dies Direct on written demand for any costs or losses sustained or incurred by Dies Direct arising directly or indirectly from the Customer Default.

6.3 Customer Materials supplied by the Customer to Dies Direct to facilitate performance of the Contract (whether belonging to the Customer or to a third party) shall at all times (both while in Dies Direct's possession and in transit to or from Dies Direct) be at the Customer's risk. The Customers shall check with its insurers to ensure that satisfactory cover is in place. Dies Direct is willing to liaise with the Customer's insurers for that purpose but, save in the case of deliberate damage to property by Dies Direct, Dies Direct shall not in any circumstances be responsible for any loss or damage (whether caused by negligence or otherwise) of any nature to such Customer Materials in such circumstances.

7. **CHARGES AND PAYMENT**

7.1 The price for Goods and Services shall be the price set out in the Order or, if no price is quoted, the price set out in Dies Direct's estimate or price list as at the date of Delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

7.2 Dies Direct reserves the right to increase the price of the Goods and Services, by giving notice to the Customer at any time before Delivery, to reflect any increase in the cost of the Goods or Services to Dies Direct that is due to:

7.2.1 any factor beyond the control of Dies Direct (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, the nature of the Services to be performed, or the Specification in respect of the Goods or Services; or

7.2.3 increase to Dies Direct of the costs of production.

7.3 Dies Direct shall invoice the Customer on or at any time after completion of Delivery.

7.4 Unless otherwise agreed in writing by Dies Direct, the Customer shall pay for the Goods and Services in full on the earlier of:

7.4.1 Delivery of the Goods and for provision of the Services to the Customer;

7.4.2 Collection of the Goods from Dies Direct's premises by the Customer; and

7.4.3 If Goods are delivered or added in instalments, such part of the price which applies to each instalment shall be payable upon collection/Delivery of that instalment; and

time for payment shall be of the essence of the Contract.

- 7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).
- 7.6 Without limiting any other right or remedy of Dies Direct, if the Customer fails to make any payment due to Dies Direct under the Contract by the due date for payment (**Due Date**), Dies Direct shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current base lending rate of the Lloyds TSB Bank plc 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 monthly.
- 7.7 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 Dies Direct in order to justify withholding payment of any such amount in whole or in part. Dies Direct may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Dies Direct or other Related Party to the Customer.
- 7.8 Without limiting any other right which Dies Direct may have under the Contract, Dies Direct shall have a lien over any Customer Materials in its possession in respect of any outstanding payments due to it under the Contract or otherwise to Dies Direct by the Customer.
- 7.9 Title to the Goods shall not pass if any invoice or amount is overdue.
- 7.10 If Goods and Services are supplied to the Customer under credit terms, all unpaid amounts will become immediately due and payable if any invoice or amount becomes overdue.
- 7.11 If any of the events in clause 10 should occur, whether or not such event leads to termination of this agreement, then any amounts or invoices outstanding shall become immediately due and payable by the Customer.

8. **MISCELLANEOUS**

- 8.1 All items produced by Dies Direct to facilitate performance of the Contract (including without limitation designs, artwork, plates, moulds, stereotypes, electro types, film-setting, negatives and positives) shall remain the exclusive property of Dies Direct which shall not be obliged to deliver them to the Customer. Dies Direct may, in its absolute discretion, dispose of such items at any time. If the Customer wants the items to be retained by Dies Direct it must give notice to that effect and a storage charge may be made.
- 8.2 Any dies produced using proprietary processes including but not limited to Securigrafix, Datafoil, Datafoil HD, Duogram, Duogram HD or Photographix will remain the property of Dies Direct even if the Customer has paid for such dies and such payment shall constitute a licence fee for the use of such dies, which may only be used by a third party with Dies Direct's prior written consent.
- 8.3 All Customer dies, artwork and other property of the Customer stored on Dies Direct's premises may be disposed of by Dies Direct, without any reminder being issued, if the Customer Materials have not been used within the previous two years prior to disposal taking place.

8.4 Dies Direct shall be entitled (but not obliged) to refuse to carry out work which it believes could lead to a claim from a third party (including without limitation claims that the printed matter is illegal, libellous or infringes third party rights). In any event, the Customer shall indemnify Dies Direct and keep it indemnified in full against any cost, claim, liability or expense (including the cost of settlement reached in good faith and lawyers fees) incurred or suffered by Dies Direct in any way as a result of any claim made against it by a third party as a consequence of Dies Direct's involvement in this contract.

9. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

9.1 Nothing in these Conditions shall limit or exclude Dies Direct's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

9.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

9.1.5 defective products under the Consumer Protection Act 1987.

9.2 Subject to clause 9.1:

9.2.1 Dies Direct shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract including (without limitation) loss to any other products which are added to the Goods after Delivery or relating to any further process applied to the Goods by third parties after Delivery (onward processing costs); and

9.2.2 Dies Direct's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the lower of:

(i) five times the price of the Order; and

(ii) £30,000 or (if higher) the price of the Order.

9.3 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.

9.4 This clause 9 shall survive termination of the Contract.

9.5 The Customer acknowledges that the limitations of liability set out in this clause 9 have been reasonably determined in order to enable Dies Direct to provide the Goods and Services at the prices set out in the Order in a competitive market without having to increase the prices as a result of the additional risk which would otherwise result. Dies Direct's quoted prices are based on the limitation of liability specified in this clause 9. If the Customer requires additional liability protection it must contact Dies Direct in writing before placing its Order and Dies Direct will quote an additional price for such increased liability protection.

10. **TERMINATION**

10.1 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:

10.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing of the breach;

10.1.2 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 or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

10.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

10.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

10.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

10.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

10.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

10.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- 10.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 10.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.2 to clause 10.1.9 (inclusive);
 - 10.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - 10.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 10.2 Without limiting its other rights or remedies, Dies Direct may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, Dies Direct 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 Dies Direct if:
- 10.3.1 the Customer fails to make pay any amount due under the Contract on the due date for payment; or
 - 10.3.2 the Customer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.12, or Dies Direct reasonably believes that the Customer is about to become subject to any of them.

11. CONSEQUENCES OF TERMINATION

- 11.1 On termination of the Contract for any reason the Customer shall immediately pay to Dies Direct all of Dies Direct's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has yet been submitted, Dies Direct shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 11.2 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
- 11.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. GENERAL

- 12.1 Force majeure:
 - 12.1.1 For the purposes of the Contract, **Force Majeure Event** means an event beyond the reasonable control of Dies Direct including but not limited to 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 or default of suppliers or subcontractors.

12.1.2 Dies Direct shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

12.1.3 If the Force Majeure Event prevents Dies Direct from providing any of the Services and/or Goods for more than 4 weeks, Dies Direct shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

12.2 Assignment and subcontracting:

12.2.1 Dies Direct may at any time assign, 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.

12.2.2 The Customer shall not, without the prior written consent of Dies Direct, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.3 Notices:

12.3.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

12.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

12.3.3 This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

12.4 Waiver and cumulative remedies:

- 12.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 12.5 Severance:
- 12.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.6 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 as 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.
- 12.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.8 Variation: 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 Dies Direct.
- 12.9 Governing law and jurisdiction: The 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 exclusive jurisdiction of the courts of England and Wales.