

## PHOENIX COLOUR plc

### STANDARD CONDITIONS OF CONTRACT

#### 1. Definitions

- 1.1. "Company" means Phoenix Colour plc which trades from its address at 11 Knighton Fields Road West, Leicester LE2 6LH.
- 1.2. "Customer" means the person with whom the Company is dealing.
- 1.3. "Conditions" means the terms and conditions of contract set out in this document and any special terms and conditions additional to those set out herein agreed in writing by the Company or agreed in accordance with Clause 2.3.
- 1.4. "Price" means the price for the works or the goods excluding carriage and VAT.
- 1.5. "Works" means the services which the Company has agreed to carry out for and on behalf of the customer.
- 1.6. "Goods" means the articles which the Customer has agreed to buy from the Company.
- 1.7. "Delivery Date" means the date specified by the Company when the Company will endeavour to comply with its obligations under the Contract.
- 1.8. "Digital Media" means media supplied by Desk Top Publishing computer systems whether on diskette, optical disk, syquest cartridge, compact disk or supplied by Integrated Services Data Network or other like means whatsoever.

#### 2. Conditions Applicable

- 2.1 These conditions shall apply to all contracts between the Company and the Customer to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for works or goods by the Customer will be deemed to be an offer by the Customer to purchase the works or the goods pursuant to these Conditions.
- 2.3 Any telephone order or other order made by a Customer without notice of these Conditions shall be deemed to be an invitation to treat only and to be of no effect unless in accordance with the following provisions it becomes deemed to be an offer to purchase works or goods by the Customer pursuant to these Conditions. To become deemed to be an offer to purchase pursuant to these Conditions the Company shall (at its option) confirm receipt of the telephone or other order by sending to the Customer (inter alia) these Standard Conditions of Contract. The Customer without notice shall thereafter be deemed to have made an offer to purchase the works or the goods pursuant to these Conditions after the expiry of 7 days from its receipt of these Standard Conditions of Contract unless within 7 days of receipt the Customer withdraws the telephone or other order made without notice by sending notice of withdrawal to the Company. The provisions as to Notice set out at Clause 11 shall apply to the operation of this sub-clause.
- 2.4 Acceptance of delivery of the goods or the works shall be deemed to be conclusive evidence of the Customer's acceptance of these Conditions.
- 2.5 These Conditions together with the terms specifically referable to the nature of works and/or the goods and any special terms and conditions agreed in writing by the Company contain the entire agreement between the parties in respect to its subject matter and they supersede all previous Conditions and understandings that may have been agreed between the parties and they may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer.

#### 3. Quotations

- 3.1 All price quotations given by the Company are for the Customer's information only. All prices quoted are exclusive of VAT and carriage and any other duties which may become payable.
- 3.2 All Quotations are to be regarded as "invitations to treat" only. The Company will endeavour to accept offers made by Customers incorporating Quotations providing such offers are made within 30 days of the date of the Quotation.
- 3.3 Rates of VAT charged and other duties which may become payable and rates for carriage will be those current on the date of despatch to the Customer irrespective of when the Contact may have been formed.

#### 4. Price and Payment

- 4.1 Payment of the Price and VAT (and any other duty which may become payable) and carriage and any other payments due shall be net cash within 30 days of date of Invoice. The Company shall be entitled to invoice the Customer at or at any time after the date of delivery. Time for payment shall be of the essence.
- 4.2 Interest on overdue invoices shall accrue from the date when payment becomes due until the date of payment at the rate of 3% per annum above the base lending rate of National Westminster Bank Plc from time to time in force and shall accrue at such rate before and after judgement.
- 4.3 The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set-off or counterclaim which the Customer may have or allege to have or for any other reason whatsoever.

#### 5. Delivery

- 5.1 Delivery dates are approximate only and while every effort will be made to maintain delivery dates the Company accepts no liability for delay however occasioned or for the consequences of delay. Delivery to the Customer or to its order is governed by the Customer signing-off the proof supplied to it by the Company and communicating the fact of signing off to the Company.
- 5.2 Should the Company be prevented from delivering at the Delivery date as agreed by any act within Clause 10 hereof, the Company may suspend delivery until a reasonable time after the end of the event so preventing delivery and during such period as is reasonable for the Company to re-commence normal working or it may cancel the Contract without compensation being due from the Company to the Customer.
- 5.3 Unless otherwise agreed delivery shall be ex the Company's premises at the address shown herein. Where Contracts do not specify a delivery date the Goods shall be deemed to be delivered within 14 days of the Customer being notified by the Company that the Goods are ready for collection from the Company's premises and the Goods shall be deemed to have been accepted by the Customer in accordance with Clause 7 hereof 7 days hereafter.
- 5.4 In the event of failure by the Customer to collect Goods in accordance with its obligations under 5.3 above delivery shall be deemed to have occurred on the date notified to the Customer and the Goods shall be deemed to have been accepted by the Customer 7 days later.
6. Customer Requirements, Digital Media and Corrections.
- 6.1 The Company is a colour reproduction house producing (inter alia) finished film positives or negatives and plates from Customer's Digital Media and/or other origination.
- 6.2 All standing matter, namely metal, film and other materials used by the Company in production of positives, negatives and plates shall be and remain the property of the Company.
- 6.3 The Company shall be entitled to charge an additional amount by way of quantum meruit in respect of all test work requested by the Customer which it carries out whether of an experimental nature or otherwise.
- 6.4 All property belonging to the Customer and/or supplied to the Company by or on behalf of the Customer will be held and works carried out in relation thereto at the Customer's sole risk. If any Customer shall have an overdue account the Company shall be entitled to exercise a lien over any of the Customers property until payment of the outstanding account is made in full.

6.5 The Company carries out colour systems work in accordance with original copy usually supplied in digital media form by the Customer. The Customer accordingly has sole responsibility for the accuracy and correct nature of the digital media supplied by it to the Company. Should alterations from original digital media supplied be required by the Customer it shall supply the corrected and/or altered digital media to the Company. If the Company agrees to alter and/or correct the digital media supplied to it by the Customer, the Customer must notify all such corrections and/or amendments to the Company in writing and must sign-off by way of verification in writing that it has inspected the alterations and/or corrections to the digital media supplied by it as transposed before the Company carries out any plating and/or printing works.

6.6 The Company does not alter digital media from the form as supplied to it by a Customer. The Company will only alter or correct digital media supplied by a customer in the form as downloaded by it onto the Company's systems. If the Customer specifically requests alterations and/or corrections and the Company agrees to carry such out in accordance with the provisions at sub-clause 6.5 above the Customer must sign-off a print of the corrected film before plating and/or delivery. Such signing-off shall be deemed to be an unequivocal acceptance that the alterations and/or corrections have been carried out in accordance with the Customer's request and to its satisfaction.

- 6.7 Should corrections and/or alterations from original digital media be required by the Customer then the Company shall be entitled to charge an additional amount for works in connection therewith by way of quantum meruit.
- 6.8 The Company reserves the right to submit proofs to the Customer for signing-off in respect of all works and/or goods. The Company shall not be liable for any errors in the works and/or goods which were contained in proofs and/or corrected or altered digital media ("proofs") submitted by the Company for the Customer's approval:
  - a) where the proofs are signed off by the Customer;
  - b) where the Customer fails to sign-off the proofs and/or to notify the Company of defects within 24 hours of despatch of the proofs to it;
  - c) where the proofs are despatched to the Customer by the Company or the Company attempts so to do but the proofs do not reach the Customer's attention within 24 hours of despatch or attempted despatch;
  - d) where the Customer does discover defects present in the proofs and attempts to notify the Company within 24 hours of despatch of the proofs but fails so to do for whatever reason.

6.9 The Customer shall be solely responsible for any matter printed and/or produced on the instructions of or at the request of the Customer and for all matters executed by the Company on the instructions of or at the request of the Customer and the Customer shall be solely responsible for and shall indemnify the Company in respect of any claim or proceedings brought by any third party arising therefrom. The Customer shall be solely responsible for obtaining all necessary licences, copyright approvals and consents.

#### 7. Liability, Claims and Inspection

- 7.1 The Customer shall inspect the goods and/or works on delivery and shall within 7 days of delivery notify the Company of any alleged defect, damage or failure to comply with any description, test or other specification as may have been agreed. If the Customer shall fail to notify as aforesaid the Customer shall be deemed to have accepted the goods and/or the work 7 days after delivery.
- 7.2 The Customer shall notify the company of any non-delivery of a whole consignment of goods and/or works within 7 days of the receipt of an Invoice in respect of such a consignment.
- 7.3 In the event of goods supplied by the Company or works carried out by the Company not complying with the express terms of the Contract or proving to be of defective quality the Company's liability shall (except in respect of the case of personal injury or death caused by the negligence of the Company) be limited to refunding that part of the Contract price which relates to the defective items.
- 7.4 The Company hereby excludes all liability for any loss or damage or consequential loss or damage howsoever caused whether arising from a breach of this Contract, or from any duty of care owed by the Company to the Customer or in respect of any representation made in connection with or inducing the Contract or otherwise (except in the case of personal injury or death caused by the negligence of the Company) save for a refund of the contract price as aforesaid.
- 7.5 All conditions or warranties whether express or implied by statute or otherwise are hereby excluded insofar as they are inconsistent with these terms.

#### 8. Title and Risk

- 8.1. Property in any goods supplied by the Company to the Customer shall remain vested in the Company until payment (namely the receipt by the Company of cash or cleared funds) for all goods so supplied has been made by the Customer to the Company in full or until such time as the Customer shall have sold such goods in accordance with Condition 8.4 hereof.
- 8.2 Notwithstanding that the property in the goods may remain vested in the Company as aforesaid the risk shall pass from the Company to the Customer when the goods are delivered to the Customer and the Company shall be entitled to recover from the Customer the price and all sums due under this Contract.
- 8.3 Until such time as the property in the goods passes to the Customer, the Customer shall hold the goods as the Company's fiduciary agent and bailee and shall keep the goods separate and apart from those of the Customer and third parties and properly stored, protected and insured with a reputable insurance company (at the Customer's expense) and identified as the Company's property. The insurance shall cover the Company's interest in the goods and provide cover for the goods at their full sale price against risk of fire, explosion, water damage and other usual perils (and the Company's interest shall be duly endorsed on the policy). The Customer shall hold in a separate Bank Account all monies paid under such insurance in trust for the Company and shall pay the same to the Company on demand.
- 8.4 Notwithstanding that the title to the goods has not passed to the Customer, the Customer shall be entitled to re-sell (subject to further provisions of this clause) the goods in the ordinary course of its business but in so doing the Customer shall not act as the Company's agent but as principal only. The Customer shall only be entitled to sell the goods to a bona fide purchaser at a normal commercial price and the proceeds of sale shall be held by the Customer in a separate Bank Account on trust to pay to the Company all monies due from the Customer to the Company in respect thereof and the Customer shall pay the same to the Company forthwith and in any event on demand.
- 8.5 Notwithstanding that the title to the goods has not passed to the Customer, the Customer shall be entitled to use (subject to the further provisions of this cause) the goods in the ordinary course of its business. Title to goods supplied by the Company to the Customer shall remain vested in the Company notwithstanding the use or adaptation by the Customer or any third party. If such goods are admixed or united or incorporated with goods belonging to the Customer the product thereof shall be the property of the Company. If goods so supplied are admixed or united or incorporated with goods belonging to any person or persons other than the Customer, the product thereof shall be the property of the Company in common with such other person or persons in the proportion of the value of the constituent parts.
- 8.6 Until such time as the property in the goods passes to the Customer (and provided the goods are still in existence and have not been re-sold) the Company shall be entitled at any time to require the Customer to deliver up the goods to the Company and if the Customer fails to do so forthwith, to enter upon any premises of the Customer where any goods are stored and re-possess the goods. By entering into this agreement the Customer shall be deemed to have granted to the Company a licence to enter onto any of its premises where the goods are stored or where the Company may reasonably believe the goods to be stored and the said licence shall be irrevocable at any time during which payment in full of the price of the goods and all other goods agreed to be sold by the Company to the Customer remains outstanding.

8.7 Where goods are supplied by the Company to the Customer under a number of separate invoices the following additional provisions shall apply: -

- a) The Customer shall be presumed to re-sell goods for which it has made payment to the Company and
  - b) where the Customer mixes goods for which payment has been made to the Company with identical goods for which payment has not been made, the Company shall be entitled to nominate any items of the mixed goods as being items for which payment has not been made to it up to the limit of the total number of such items whereupon the nominated items shall be conclusively presumed to be items in respect of which payment has not been made and in which title remains vested in the Company.
- 8.8 Each part of clause 8.7 and each of its sub-clauses shall be severable from the remaining parts of the clause. If any provision of this clause is held by any Court or other competent authority to be void or unenforceable in whole or in part, this clause shall continue to be valid as to the other provisions hereof and the remainder of its affected provisions.

#### 9. Insolvency or Other Default of Customer

9.1 If the Customer fails to make payment for the works and/or the goods in accordance with this contract or commits any other breach of this contract or if any distress or execution shall be levied upon of the Customer's goods or if the Customer offers to make any arrangement with its creditors or commits an act of bankruptcy or any Petition in Bankruptcy is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company any resolution or Petition to Wind-up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the Customers business or assets or if the Customer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the works and/or the goods shall become payable immediately. The Company may in its absolute discretion and without prejudice to any other rights which it may have suspend all future deliveries of works and/or goods to the Customer and/or terminate the contact without liability upon its part and/or exercise any of its rights pursuant to clause 8.

#### 10. Force Majeure

10.1 The performance of all contracts is subject to variation or cancellation by the Company without notice owing to any Act of God, war, strikes, lock-outs, fire, flood, drought, tempest or any other cause beyond the control of the Company or owing to any inability of the Company to procure materials or articles required for the performance of the contract and the Company shall not be held responsible for any inability to deliver caused by any such contingency.

#### 11. Notices

11.1 Any Notice required to be given by either party or any account rendered by the Company to the Customer (save only in relation to signing-off) shall be deemed to have been given or rendered if despatched by first class post and addressed to the Customer or the Company as the case may be at the address of each shown overleaf or to their respective last known business address or registered office and any such Notice or Account rendered shall be deemed to have been received 2 days after posting as aforesaid.

11.2 In the alternative to the matters at 11.1 above any Notice required to be given by either party or any account rendered by the Company to the Customer shall be deemed to have been given or rendered if sent by facsimile transmission machine during business hours to the Customer or the Company as the case may be at the facsimile number of the Customer or to the facsimile number at their respective last known business address or registered office and any such Notice or Account rendered shall be deemed to have been received if a facsimile transmission confirmation produced by such machine shows due and proper transmission.

11.3 Proofs for "signing-off" will be despatched by the Company to the Customer by facsimile machine or if such facility is not available to the Customer the proofs must be collected by the Customer from the Company's premises. Subject to the provisions of Clause 6 herein the Customer may notify due signing-off or the presence of defects in the proofs by facsimile transmission sent to the Company at its facsimile number. In the case of purported defects the same must be clearly identified and a written description of each alleged defect supplied.

#### 12. Interpretation

- 12.1 All headings in this document are inserted for convenience and each of reference only and shall not affect the construction or interpretation of this contract.
- 12.2 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision in this contract.
- 12.3 No waiver or forbearance by the Company whether express or implied in enforcing any of its rights under the contract shall prejudice its right to do so in the future.
- 12.4 Save as otherwise provided in these Conditions nothing in these Conditions shall create any partnership joint venture or relationship of principal and agent between the parties.
- 12.5 Except where expressly provided for in these Conditions time shall not be of the essence of the contract.

#### 13. Governing Law

13.1 This contract is subject to the Law of England and Wales and all disputes arising out of this contract shall be subject to the exclusive jurisdiction of the Courts of England and Wales.