

SCHEDULE

BOMBOUCHE LIMITED

Terms and Conditions

1. Estimates

1.1 Any estimated price(s) or quotation is based on:

- (a) approximate volumes and estimated costs current at the time the estimate is produced; and/or
- (b) information provided by the Client as at the date of the estimate. Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 days from its date of issue, provided that the Supplier does not withdraw it during the 30-day period.

Any request for a variation in the quality or quantity of goods or services provided will give rise to a variation in the estimated price(s) or quotation.

1.2 Any estimated timescales are based on the available capacity at the time of the estimate or quotation; these may be subject to change and do not form part of the Agreement.

1.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the goods and services contained in the Supplier's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods and services described in them. They shall not form part of the Agreement nor have any contractual force.

1.4 In this Agreement, "Client" and "Supplier" shall mean the parties named on the *account opening form*; and "Agreement" shall mean the entire arrangement between the parties.

2. Changes to the Price

The Supplier reserves the right to increase the Price, by giving notice to the Client, to reflect any increase in the cost of the goods and services to be delivered in accordance with this Agreement (the "**Deliverables**") to the Supplier that is due to:

- (a) any variation to the estimate or specification, or the Delivery Date, at the request or with the agreement of the Client; or
- (b) any alteration in costs of raw materials, postage price increases or overheads affecting the Deliverables;
- (c) the Supplier uses the Royal Mail's Advertising Mail service. In the event the order does not meet the requirements for the Supplier to use this service, an additional charge may be incurred by the Client; or
- (d) where address data is to be cleansed against the Postcode Accreditation File or another data cleansing service, this will be at an additional cost;

(e) the address data is required to meet Royal Mail's 90% minimum Delivery Point Suffix (DPS) accuracy level. An additional charge may be incurred by the Client for an order which does not meet this requirement.

3. Client's Obligations

- 3.1 The Client is responsible for ensuring that the materials supplied by it or on its behalf in respect of the Order Form (the “**Client Materials**”):
- (a) conform to specifications in the Order Form and comply with any couriers' requirements;
 - (b) are supplied punctually;
 - (c) are accompanied by a delivery advice note stating the quantity and description of the Client Materials supplied;
 - (d) are packed and supplied in such a way as to withstand normal storage and handling within a warehouse and packing environment; and
 - (e) are sufficient to enable the Supplier to deliver the quantity of goods specified in the Order Form, allowing for normal wastage and spoilage (normally 4%).
- 3.2 All Client Materials are at the Client's risk whilst on the Supplier's premises or whilst in transit to the Supplier's premises and the Client is responsible for arranging adequate insurance cover for the Client Materials.
- 3.3 The Client must supply Client Materials to the Supplier of at least 104% of the total Deliverables to be delivered pursuant to this Agreement, in order to account for wastage arising from set-up and spoilage. It is the sole responsibility of the Client to ensure the required amount of Client Materials, to fulfil the order, has been provided to the Supplier. In the event insufficient Client Materials are supplied by the Client to complete the order in one process by the Delivery Date, a surcharge of the actual costs incurred by the Supplier for stopping and restarting the process may be made and any Delivery Date may be delayed (for which delay the Supplier accepts no liability).
- 3.4 The Client must ensure that any computer data supplied to the Supplier is fit for purpose and capable of being read and processed and does not contain computer viruses. In the event of the computer data being corrupt, the Supplier will require the Client to supply clean data at the Client's expense.
- 3.5 The Client must ensure that all data supplied to the Supplier is unambiguous with regard to its format.
- 3.6 Client data is accepted subject to the compatibility of the database, data is disposed of at the conclusion of the contract pursuant to the guidelines laid down in Data Protection Legislation unless data storage arrangements have been agreed, such arrangements are chargeable.
- 3.7 The Supplier will store Personal Data and other information only in order to comply with its obligations under this Agreement.
- 3.8 All stationery supplied as Client Materials for laser personalisation should be of laser guaranteed quality. The Supplier will not accept any responsibility for any stationery supplied by the Client that will not run through laser machines. If the Client is unsure of a material's suitability to run through laser machines, the a printed test stock (a minimum of 20 sheets) should be supplied at the Client's cost.

- 3.9 Mailing lists may be ordered by the Supplier on behalf of and as agent for the Client. The Supplier shall not incur any liability in respect of the provision or contents of such lists and the Client is responsible for the suitability of a particular list for its purposes.
- 3.10 Mailing lists are supplied for one-off use on a rental basis and must not be copied or re-mailed without the express permission of the principals of the list. All lists supplied by the Supplier are directly governed by the rules stipulated under the Data Protection Legislation and Mail Preference Service. The copyright will remain with the Supplier or its supplier.
- 3.11 The Client shall provide the Supplier with a true copy of all advertising material or other material intended to be enclosed with any Deliverables.
- 3.12 The Client shall ensure that all information or Client Materials complies with all applicable statutory requirements and with the codes of practice of the appropriate supervisory bodies including, but not limited to, the British Codes of Advertising and Sales Promotion and the Direct Marketing Association's Code of Practice.
- 3.13 The Supplier reserves the right to reject any Client Materials which in its opinion is or may be of an illegal, obscene or offensive nature. The Client indemnifies the Supplier against all actions, claims and proceedings which arise due to requirements or specification which involve or are alleged to involve defamation, obscenity, infringement of any copyright, propriety or other rights of any third party or any unlawfulness or illegality of any kind whatsoever.

4. Storage of Client Materials

- 4.1 The Client may deliver the Client Materials to the Supplier's premises at any time within the week prior to the delivery date specified in the Order Form ("**Delivery Date**").
- 4.2 The Supplier will record the number of boxes or pallets of Client Materials delivered by or on behalf of the Client against any delivery note and sign for the materials "unchecked". The Supplier will not accept any liability whatsoever for any shortfall in the Client Materials nor for any loss arising from any errors or omission in the Client Materials supplied.
- 4.3 Subject to the remaining provisions of this clause 4, the Supplier shall not charge any fee for the storage of the Client Materials.
- 4.4 A separate storage fee will be payable by the Client if:
- (a) the Client Materials require storage space in excess of 2.4m³, whether before or after the Delivery Date; and/or
 - (b) after one week/month following the Delivery Date, any excess Client Materials have not been either despatched (at a cost in addition to the Price) or collected by the Client.

The storage fee will be payable in advance for the following three months.

- 4.5 Pallets or parts of pallets used to contain the Client Materials will be charged at the Supplier's pallet rate from time to time.

- 4.6 The Supplier shall be entitled to exercise a lien over the Client Materials in circumstances where any invoice in respect of an order to which the Client Materials relate remains unpaid after it has fallen due for payment.
- 4.7 The Supplier reserves the right to destroy or dispose of any Client Materials left on the Supplier's premises more than 30 days after the Delivery Date and to charge the Client all costs reasonably associated with such destruction or disposal including (without limitation) any costs relating to the cleaning or clearing of the storage space.
- 4.8 The Client must declare whether any liquids or other materials that require special handling comprised within the Client Materials are to be stored at the Supplier's premises and agrees that the Supplier may in its sole discretion decline to store such items.

5. Order and Delivery

- 5.1 The Supplier will use all reasonable endeavours to meet the Delivery Date but time shall not be of the essence in respect of such date.
- 5.2 The Supplier does not accept responsibility for the goods or the Client Materials once they have been accepted by the third party delivery service for dispatch to the Client.
- 5.3 The Supplier does not guarantee that it will deliver the exact quantity of goods ordered by the Client. The Supplier shall be deemed to have complied with its obligations under the contract by delivery of a quantity of goods constituting plus or minus 10% of the quantity ordered. The price paid by the Client shall reflect the actual quantity delivered and shall be amended by the Supplier.
- 5.4 Where a postponement of the Delivery Date is agreed between the parties, goods, items or materials shall be held at the Client's risk from the date of postponement. Goods, items or materials may be stored free of charge on the premises of the Supplier for a period of 7 days during postponement. Thereafter, the Supplier reserves the right to charge a fee for storage of goods, items and materials.
- 5.5 Where collection and or delivery is carried out by the Supplier for the Client this will incur an extra charge.

6. Force Majeure

- 6.1 If a Force Majeure Event prevents the Supplier from meeting the Delivery Date (or any agreed postponed date for delivery) for more than two weeks, either party shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the other party.
- 6.2 For the purposes of this clause, a "**Force Majeure Event**" means any event beyond the reasonable control of the Supplier.

7. Intellectual property rights

Pre-Existing Materials

- 7.1 As between the Client and the Supplier, all Intellectual Property Rights and all other rights in the Pre-existing Materials shall be owned by the Supplier.

7.2 Subject to clause 7.3, the Supplier licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. If this Agreement is terminated under clause 12, this licence will automatically terminate.

7.3 The Client acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Client.

Client Materials

7.4 The Client shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that any Client Materials or Input Materials infringe any Intellectual Property Rights owned by a third party ("**Third Party Rights**").

Deliverables

7.5 On becoming aware that any material comprising Third Party Rights is used in Deliverables, the Supplier will promptly communicate this to the Client.

7.6 Unless otherwise agreed in writing, the Client will accept full responsibility for ensuring the proper use of any materials including Third Party Rights, including full payment of all associated costs.

7.7 The Supplier cannot and will not use materials including Third Party Rights unless it is entitled to do so.

7.8 If any Deliverables include any Client Materials, it is agreed that the Supplier shall have the right to use or allow use of such Client Materials for the purpose of fulfilling the Supplier's obligations under the Agreement. The Supplier shall not gain any rights over such Client Materials by virtue of such use but the Supplier shall be entitled to use the Client Materials both during and after the production and supply of the Deliverables to promote and advertise its own work.

7.9 Subject to clauses 7.5 to 7.8 and to payment in full of the Price to the Supplier by the Client, the Supplier will assign to the Client with full title guarantee all the present and future Intellectual Property Rights in the Deliverables.

7.10 The Client shall indemnify and hold harmless the Supplier and the Supplier's agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind (including reasonable legal fees) arising from any claim, demand or action alleging that any Input Materials, Client Materials or Deliverables infringe any Third Party Rights or are contrary to any law, code or regulation in any country.

7.11 It shall be the Client's responsibility to ensure that all domain names used in connection with the Deliverables are wherever practicable properly registered and do not infringe any Third Party Rights.

7.12 For the purposes of this clause 7:

- (a) "**Pre-existing Materials**" means all documents, information and materials provided by the Supplier relating to the services to be provided

under this Agreement which existed prior to the commencement of this Agreement, including any pre-existing materials specified in the Order Form;

- (b) **“Input Material”** means all documents, information and materials provided by the Client relating to the Services, including computer programs, data, reports and specifications; and
- (c) **“Intellectual Property Rights”** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

8. Data Protection

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. .
- 8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client shall be the Data Controller and the Supplier shall be the Data Processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
- 8.3 Without prejudice to the generality of clause 8.1, the Client shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Agreement.
- 8.4 Without prejudice to the generality of clause 8.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
 - (a) process that Personal Data only on the written instructions of the Client unless the Supplier is required by Applicable Laws to otherwise process that Personal Data.;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 8.

8.5 The Client consents to the Supplier appointing a third-party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 8. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.

8.6 For the purposes of this Agreement:

- (a) **“Applicable Laws”** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or UK Law;
- (b) **“Data Protection Legislation”** means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation;
- (c) **“Data Subject”** has the meaning set out in s.3 (5) Data Protection Act 2018;
- (d) **“Personal Data”** has the meaning set out in s.3 (2) Data Protection Act 2018 but only in respect of personal data, or any part of such personal data, in relation to which the Client is the Data Controller and in relation to which the Supplier is providing services under this Agreement; and

- (e) “**Processing**” has the meaning set out in s.3(4) Data Protection Act 2018 and cognate terms shall be construed accordingly.

9. Charges and payment

- 9.1 In consideration of the provision of the Deliverables and services under this Agreement by the Supplier, the Client shall pay the price to be paid set out in the Order Form, and all other fees and charges set out in or arising under this Agreement (the “**Price**”) in accordance with this clause 9.
- 9.2 The Client shall pay each invoice submitted to it by the Supplier, in full and in cleared pounds sterling funds, within 30 days of receipt or such other period as may be specified by the Supplier, in either case to the bank account nominated in writing by the Supplier.
- 9.3 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier on the due date:
- (a) the Client shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount; and
 - (b) the Supplier may suspend all Services until payment has been made in full.
- 9.4 The Client shall also pay all and any VAT payable in respect of the Deliverables and the services to be provided under this Agreement, which the Supplier shall add to its invoices at the appropriate rate.
- 9.5 All sums payable to the Supplier under this Agreement shall become due immediately on its termination, despite any other provision. This clause 9.5 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 9.6 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.7 Where accounts are settled in currencies other than pounds sterling, the Supplier reserve the right to recover currency conversions and bank charges.
- 9.8 The Supplier reserves the right not to post material under the contract until the postage invoice has been paid by the Client. Unless otherwise agreed, prepayment is required for all postage costs. Where a 7 day credit period is given, the Client is eligible to receive postage discounts if payment for the amount invoiced for postage is made within the period of invoice. Where postage payment is not received within the credit period an invoice will be raised for the full postage price, without discount. The Supplier reserves the right to charge the full postage costs (at franked rates) on late payment outside of the payment terms stipulated by the Supplier. There is a minimum £250.00 administration fee for postage payments up to 7 days late and the full franked rate may be levied without further notice to the Client.
- 9.9 Where postage collections have been booked on behalf of the Client and the Client cancels or postpones the collection prior to 2.00 pm the day before the

date of collection, a charge of £250 will be made for re-booking the collection. The Client will be required to pay destruction fees for mail that is cancelled if its disposal is required.

10. Production and Printing Credits

The Client agrees to allow the Supplier to place a small credit on printed material, exhibition displays, advertisements and/or a link to the Supplier's own website. This will usually be in the form of a small logo or line of text placed towards the bottom of the page.

11. Limitation of Liability

11.1 Nothing in this Agreement shall limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

11.2 Subject to clause 11.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement;
- (b) the Supplier may, in its sole discretion, make good any liability under the Agreement by replacing or repairing the Deliverables or repeating the services to which this Agreement relates; and
- (c) the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price. The Price shall exclude any thirdparty costs, including but not limited to postage and Value Added Tax.

11.3 The Client must notify the Supplier of any loss or damage suffered to the goods, or any shortfall thereof, as soon as reasonably practicable and must confirm this in writing in any event no later than 7 days after delivery or collection of the Deliverables. The Supplier reserves the right to require evidence (including photographic evidence) of any alleged loss or damage to the Deliverables before taking any further action. Where the Supplier agrees there has been loss or damage to the goods, for which the Supplier is at fault, the Supplier will refund the cost of the goods. The Client must return any damaged goods to the Supplier at the Client's cost. The Supplier will process a refund within 7 days of receipt of the damaged goods.

11.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

11.5 This clause shall survive termination of the Agreement.

12. Termination, Cancellation, and associated matters

12.1 If the Client becomes subject to any of the events listed in clause 12.2, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Client.

12.2 For the purposes of clause 12.1, the relevant events are:

- (a) the Client suspends, or threatens to suspend, payment of his debts, or admits inability to pay its debts, or (being a company or limited liability partnership) 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 his 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;
- (b) the Client commits any breach of clause 3 which is material and not capable of remedy, or which is capable of remedy but which is not remedied within 14 days of notice from the Supplier to do so;
- (c) the Client's financial position deteriorates to such an extent that in the Supplier's opinion the Client's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; and
- (d) (being an individual) the Client dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

12.3 If the Client fails to comply with its obligations under clauses 3, 7 or 9, becomes subject to any of the events listed in clause 12.2(a) to clause 12.2(d), or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Agreement on the due date for payment, then the Supplier may, without limiting its other rights or remedies, terminate the Agreement or any other contract between the Client and the Supplier.

12.4 The Client indemnifies the Supplier in respect of all losses, costs and expenses (including, but not limited to, any legal costs or disbursements) incurred for or on behalf of the Supplier in enforcing its rights under clause 3, clause 7 and this clause.

12.5 Where a Client requests to terminate this Agreement and, at the time the request is made, the Client has paid to the Supplier any amount greater than the Price or Prices that have arisen under this Agreement (that is to say, by way of payment on account), a fee for the administration of the request to terminate shall be due and payable equal to 20% of all such amounts so paid. The remainder will be paid to the Client, subject to the Client paying all and any other charges arising under this Agreement and to prior presentation to the Supplier by the Client of proof of identity of the intended recipient (and of the intended recipient bank account) in whatever form is reasonably requested at the time by the Supplier.

12.6 Where a Client requests to cancel any order, or to amend any order, or to make changes to data that it has provided, the Supplier shall be entitled to levy an administration charge of £25.

- 12.7 Where a Client has paid to the Supplier any amount greater than the Price or Prices that have arisen under this Agreement (that is to say, by way of payment on account), and for a period of 12 months since the most recent payment on account has been made there have been no communications arising under this Agreement, the credit arising from the payment on account shall be extinguished in full and there shall be no remaining debt or claim of any nature in relation to the payment on account.
- 12.8 On termination of the Agreement for any reason:
- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;
 - (b) 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 Agreement which existed at or before the date of termination or expiry; and
 - (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. Sub-Contractors and Assignment

- 13.1 This Agreement is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 13.2 The Supplier may at any time subcontract, assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

14. Variation

No variation to this contract shall be valid or effective unless made in writing and signed by both Client and the Supplier.

15. Governing law

This Agreement 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 the law of England and Wales.

16. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

17. Confidentiality

Except as required for the performance of its obligations under this Agreement, the Supplier shall treat as confidential and will not use or disclose to any third party any information disclosed or supplied by, or on behalf of, the Client in connection with this agreement, including the Input Material.