

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

Contract: the Customer's purchase order and The Mailshop's acceptance of it, or the Customer's acceptance of a Quotation for Services by The Mailshop under condition 2.2. **Customer:** the person, firm or company who purchases Services from The Mailshop. **Data:** names, addresses, telephone numbers, fax numbers, or email addresses or other data purchased by the Customer from The Mailshop. **Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form. **Gone away:** (a) in the case of a name and address an address to which (i) an item cannot be delivered because the intended recipient has never been, or is no longer at the address or (ii) an address to which mail cannot be delivered or (iii) the item is returned to the Customer because Royal Mail are unable to deliver it (b) in the case of a telephone number (i) is a dead line or wrong number or (ii) is a fax number (and not shared by a phone) or (iii) the customer is no longer contactable on the number provided (c) in the case of a fax number (i) is a dead line or a wrong number or (ii) a phone number (and not shared by a fax machine) or (iii) the customer is no longer contactable on that number (d) in the case of an email address is an email address at which the recipient is not reachable for a number of technical and other reasons. **Mailing:** the printing, enclosing and mailing of the Customer's material or the material supplied by The Mailshop based on the Customer's requirements. **Quotation:** details of the Mailing to be carried out by The Mailshop containing details of the Services to be provided by The Mailshop, prepared by The Mailshop in accordance with the Customer's instructions and signed off by the Customer prior to the Services being undertaken. **Services:** the services to be provided by The Mailshop under the Contract and in particular the provision of Data and/or Mailings together with any other services which The Mailshop provides, or agrees to provide, to the Customer. **The Mailshop:** The Mailshop Mailing Limited trading as The Mailshop (Company Number 06603528) whose registered address is 1 Daniels Way, Hucknall, Nottingham, NG15 7LL. **VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings in these Conditions shall not affect their interpretation. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it. Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or consent to that thing being done. References to Conditions are to these Conditions.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall apply to and be incorporated into the Contract and shall prevail over any inconsistent terms or Conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a Quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order, or the Customer's acceptance of a Quotation for Services by The Mailshop, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by The Mailshop other than by a written acknowledgement issued and executed by The Mailshop or (if earlier) by The Mailshop starting to provide the Services, when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 Quotations are given by The Mailshop on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that The Mailshop has not previously withdrawn it or a Director of The Mailshop has agreed a longer period in writing.

3. CANCELLATIONS

In the event that the Customer cancels the Contract by giving The Mailshop not less than 30 day's notice The Mailshop reserves the right to charge the Customer a cancellation fee equal to 50% of the value of the Quotation plus any additional Services agreed to be supplied by The Mailshop to the Customer and The Mailshop reserves the right to charge the Customer the full cost of all materials purchased by The Mailshop on behalf of the Customer in order to provide the Services.

4. THE MAILSHOP'S OBLIGATIONS

The Mailshop shall use reasonable endeavours to provide the Services to the Customer, in accordance in all material respects with the Contract and shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall co-operate with The Mailshop in all matters relating to the Services, shall provide to The Mailshop, its agents, subcontractors, consultants and employees in a timely manner, such Documents, information and materials relating to the Services including (without limitation), computer programs, data, reports and specifications as specified in the Quotation and other information as The Mailshop may require, and shall ensure that it is accurate in all material respects, shall ensure all Documents, information and materials relating to the Services, are suitable for the purposes for which they are used in relation to the Services, and shall obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, in all cases before the date on which the Services are to start.
- 5.2 If The Mailshop's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, The Mailshop shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay, and The Mailshop will charge the Customer for any costs it incurs as a result of the breach of this condition 5.2.
- 5.3 In the event that the date of the provision of the Services is changed by the Customer, and The Mailshop consents to such a change the Customer will be liable to pay to The Mailshop the cost of any overtime or other costs incurred by The Mailshop in fulfilling the provision of the Services.
- 5.4 The Customer shall be liable to pay to The Mailshop, on demand, all costs, charges or losses sustained or incurred by The Mailshop (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to The Mailshop confirming such costs, charges and losses to the Customer in writing.

6. DELIVERY, MATERIAL & QUALITY

- 6.1 All materials delivered by the Customer must be delivered in boxes on pallets but when this is not possible the materials should be packed on pallets with edge protectors. Each box or pallet must clearly display the campaign name, content type and quantity. Each delivery must be accompanied by a delivery note, which details the total amount of the material on the delivery. The Mailshop reserves the right to refuse to accept delivery of the Customer's materials unless this condition is adhered to.
- 6.2 Due to the volume of deliveries received by The Mailshop, The Mailshop will only count the number of boxes and pallets delivered and will only accept and sign for goods as "unchecked" at point of delivery. The Mailshop will endeavour to supply to the Customer an accurate stock count within 24 hours from the time of delivery if delivery is before 12 noon on a Friday. If delivery is after this time the 24 hour period will run from 8.00am on the following Monday (provided that it is not a Bank Holiday, in which case the 24 hour period will run from 8.00am on the following Tuesday). The Mailshop will not accept any responsibility howsoever arising for any shortfalls in the amount of material delivered by the Customer, its agents, subcontractors or employees. In the event that insufficient material has been supplied by the Customer and the Services cannot be completed in one process, at the sole discretion of The Mailshop, a surcharge equal to the labour cost incurred by The Mailshop for stopping and re-starting the Services will be charged to the Customer.
- 6.3 The materials supplied by the Customer to The Mailshop must be of adequate quantity to cover normal loss and spoilage during operations carried out by The Mailshop and in all cases the materials supplied must include a minimum of 3% overs. If the materials supplied are not fit for the purpose, The Mailshop shall not be liable for any issues arising as a result of the quality of the materials or otherwise.
- 6.4 Materials that are delivered by the Customer, its agents, subcontractors or employees to The Mailshop, but are not for use by The Mailshop as part of the provision of the Services, shall be subject to loading, unloading and storage charges.
- 6.5 In the event that the Customer does not provide written instructions as to how they would like The Mailshop to deal with any leftover material the material will be kept for a maximum of 21 days before being recycled.
- 6.6 All materials supplied to the Mailshop by the Customer for laser personalisation should be of "laser guaranteed" quality. The Mailshop will not accept any liability for any stationery supplied by the Customer which cannot be processed through The Mailshop's laser printers. If the Customer has any doubts about the quality of the materials to be lasered, printed test stock should be forwarded to The Mailshop for testing prior to the Services being undertaken.
- 6.7 The Mailshop take live samples every hour for each live job to ensure that the quality of the Services provided are in accordance with the Client's instructions. Such samples will be deemed to be conclusive evidence of the Services provided to the Customer by The Mailshop. Please note that copies of the samples will be available to the Customer for a maximum period of 30 days after the commencement of the production of the Services after which time the samples will be disposed of.

7. RISK

- 7.1 The materials are at the risk of the Customer at all times and the Customer must ensure that there is adequate insurance in place in respect of the materials.
- 7.2 If the Customer, its agents, subcontractors or employees fail to collect the materials when they are ready for collection, or The Mailshop is unable to deliver the materials on time because the Customer has not provided appropriate instructions, documents, licences or authorisations The Mailshop may store the materials until collection, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

8. DATA

- 8.1 The quantity and description of the Data shall be as set out in The Mailshop's Quotation or acknowledgement of order. The Customer may not use, copy, modify, or transfer the Data in whole or in part, except as expressly provided for in these Conditions. The Customer only obtains the right to use the Data once payment for the Data has been received by The Mailshop from the Customer in cleared funds. The Customer agrees not to use the Data in any way other than for mailing, phoning, faxing or emailing for marketing and promotional purposes relating to its business or that of any of its clients. The Customer acknowledges that it is strictly prohibited from reselling the Data under any circumstances.
- 8.2 The Customer agrees to (a) comply with all data protection legislation as amended from time to time, (b) ensure that in using the Data it complies with the codes of best practice laid down by the direct marketing association and other advisory bodies in the industry of direct marketing and (c) to be responsible for obtaining and applying to the Data any necessary suppression files including, where appropriate, the mail preference service, the telephone preference service and/or the email preference service suppression files unless the Data is supplied by The Mailshop to the Customer in which case, The Mailshop will perform this service.
- 8.3 The Customer agrees to accept responsibility for its, its agents, employees or clients' actions whilst using the Data and fully indemnifies The Mailshop in respect of any claim howsoever arising from use of the Data by it, its agents, employees or clients and/or from the materials dispatched using the Data by it, its agents, employees or clients.
- 8.4 The Data may contain a number of Goneaways and unless the level of Goneaways exceeds the following percentages the Customer accepts that no replacement Data or refund shall be due in respect of these Goneaways: (a) Addresses: 6% (b) Telephone Numbers: 10% (c) Fax Numbers: 10%. The Customer hereby acknowledges and accepts that (a) where Data contains a salutation, forename, initials, or surname not all elements may be present for each record (b) that duplication may exist in different databases, (c) that in the case of business data a named contact may comprise an individual name or job title or both and that people change positions frequently so the addressee may no longer be at that address, and (d) that email addresses change frequently and the recipient may not be reachable for a number of technical and other reasons. Any claims for replacement Data or refunds for Goneaways must be made with supporting documentation within 30 days of the date of completion of the Services. Replacement Data or a refund will not be given where supporting documentation is not provided.

9. CHARGES AND PAYMENT

- 9.1 In consideration of the provision of the Services by The Mailshop, the Customer shall pay the charges as set out in the Quotation together with VAT and any additional charges agreed in writing to be paid by the Customer to The Mailshop. The total price must be paid to The Mailshop (without deduction or set-off) in full and in cleared funds, within 30 days from the invoice date. A longer credit period will only be permitted if expressly agreed in writing by a Director of The Mailshop. Time for payment shall be of the essence of the Contract.
- 9.2 In the event that the price of any materials increases between the date of the Quotation and the date the Services are provided The Mailshop reserves the right to increase the Quotation to take into account the increase in the costs of the material.
- 9.3 If the Services required are to be mailed through The Mailshop's Royal Mail Postage account, no mailings will be released unless and until the full cost of the postage has been received by The Mailshop in cleared funds prior to the mailing being despatched.
- 9.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay The Mailshop on the due date, The Mailshop may (a) charge interest on such sum from the due date for payment at the annual rate of 7% above the base lending rate from time to time of The Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand (b) The Mailshop may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998, (c) suspend all Services until payment has been made in full, and (d) if The Mailshop is undertaking more than one Contract for the Customer, it may suspend Services under all other Contracts until payment has been made in full of all outstanding Contracts.
- 9.5 In the event that payment made by the Customer is subsequently reversed payment for the full amount will remain

due to The Mailshop and The Mailshop reserves the right to pursue all applicable legal remedies to recover payment from the Customer in addition to any additional costs (including legal fees) incurred by The Mailshop in so doing.

9.6 All sums payable to The Mailshop under the Contract shall become due immediately on its termination, despite any other provision. This condition 9.6 is without prejudice to any right to claim for interest under the law, or any such right under the Contract. The Mailshop may, without prejudice to any other rights it may have, set off any liability of the Customer to The Mailshop against any liability of The Mailshop to the Customer.

10. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

10.1 This condition 10 sets out the entire financial liability of The Mailshop (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of any breach of the Contract, any use made by the Customer of the Services and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. Nothing in these Conditions limits or excludes the liability of The Mailshop for death or personal injury resulting from negligence, or for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by The Mailshop.

10.3 In the event that materials are machine enclosed, the Customer hereby acknowledges and accepts that whilst all reasonable steps are taken by The Mailshop to ensure that the materials are not marked by machinery during the provision of the Services, the process of using machines to enclose the materials may lead to minor markings on the material and The Mailshop will not be liable for any issues arising in this regard.

10.4 Subject to condition 10.2 The Mailshop shall not be liable for loss of profits, or loss of business, or depletion of goodwill and/or similar losses, or loss of anticipated savings, or loss of goods, or loss of contract, or loss of use, or loss of corruption of data or information, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses. The Mailshop's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to £2,000.

11. DATA PROTECTION

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of The Mailshop in connection with the Services.

12. TERMINATION

12.1 Without prejudice to any other rights or remedies which the parties may have, The Mailshop may terminate the Contract without liability immediately on giving notice to the Customer if the Customer fails to pay any amount due under the Contract or any other Contract entered into between The Mailshop and the Customer for the provision of the Services on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment, or the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of the Customer being notified in writing of the breach, or the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract, or the Customer 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 a natural person) 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, or the Customer 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, or 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 Customer, 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 Customer, or a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver, or a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer, or a creditor or encumbrancer of the Customer 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, or the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business, or there is a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001).

12.2 The parties acknowledge and agree that any breach of Conditions 5, 6 and 9 shall constitute a material breach for the purposes of this condition 12.

12.3 On termination of the Contract for any reason the Customer shall immediately pay to The Mailshop all of The Mailshop's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, The Mailshop may submit an invoice, which shall be payable immediately on receipt. The Customer shall, at its own cost, within 7 days collect all of the Customer's materials and if the Customer fails to do so, then The Mailshop will store the Customer's materials at the Customer's cost.

12.4 On termination of the Contract for any reason the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected and on termination of the Contract (however arising), condition 10, condition 12, and condition 22 shall survive and continue in full force and effect.

13. FORCE MAJEURE

The Mailshop shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of The Mailshop 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 The Mailshop's or subcontractors.

14. VARIATION

14.1 The Mailshop may, from time to time and without notice, change the Services in order to comply with any legislative requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

14.2 Subject to condition 14.1 no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by a Director of The Mailshop.

15. WAIVER

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. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16. SEVERANCE

If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

17. ENTIRE AGREEMENT

The Contract and the documents referred to in these Conditions constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter and each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract, save that nothing in this condition shall limit or exclude any liability for fraud.

18. ASSIGNMENT

The Mailshop may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of 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 or agent. The Customer shall not, without the prior written consent of The Mailshop, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

19. NO PARTNERSHIP OR AGENCY

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.

20. RIGHTS OF THIRD PARTIES

A person who is not a party to the Contract shall not have any rights under or in connection with it.

21. NOTICES

Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the address specified by the relevant party from time to time. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the last known address of the other party or, if sent by pre-paid first-class post or recorded delivery, at 9.00am 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. This Condition 21 shall not apply to the service of any in any proceedings or other documents in any legal action and a notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by email.

22. 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, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).