



## Absolute Post, Colour & Blindpig Terms and Conditions

### Definitions

1. In these conditions, the following terms shall have the following meanings: 'Company' means Absolute Post, Colour or BlindPig Ltd of 8 Poland Street, London W1F 8PX upon whose document these conditions are endorsed;' the Customer' means the person, firm, company or other body to whom such document is addressed. 'these conditions' means these conditions of business; and 'the contract' means the contract to which these conditions apply and which incorporates these conditions.

### Formation of Contract

2.1 All goods, services or facilities are offered and all contracts are entered into subject to the following conditions of business. Subject always to condition 15.4 all other terms, conditions or warranties whatsoever are, to the maximum extent permitted by law, excluded from the contract or any variation thereof unless expressly accepted by Company in writing. No servant or agent of Company has the power to vary these conditions orally or to make any statement or representation about the goods, services or facilities offered, their fitness for any purpose or any other matter whatsoever.

2.2 These conditions shall be incorporated into any contract between Company and the Customer to the exclusion of any terms or conditions stipulated or referred to by the Customer. Any dealings with Company following receipt by the Customer of notice of these conditions shall automatically be deemed acceptance thereof notwithstanding the absence of formal acknowledgement.

2.3 Unless otherwise expressly stated in writing, all quotations and estimates supplied by Company are invitations to treat. The Customer's order is an offer and shall become binding upon acceptance by Company.

### Prices

3.1 All prices quoted are exclusive of VAT. Company shall further be entitled to make an adjustment to the quoted price in the event that:-

3.1.1 additional costs are incurred by Company due to materials supplied by the Customer or any third party being in the opinion of Company in any way defective, in an unsuitable format (or a different format to that which Company is expecting to receive the same) or of unsuitable quality for normal processing; or

3.1.2 the information supplied by the Customer or any third party in connection with its order does not provide a full and accurate indication of the work involved;

or

3.1.3 additional costs are incurred by Company, due to alterations by the Customer or any third party in its requirements.

3.1.4 additional costs are incurred by Company due to exceptional circumstances outside the control of, Company including currency fluctuations and changes in third party costs.

#### Performance, Delivery or Collection

4.1. Unless otherwise agreed in writing, all times quoted for performance or delivery or availability for collection are given in good faith but are not guaranteed. Notwithstanding that Company and the Customer may have agreed that time is of the essence, the time for performance or delivery or availability for collection shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Alteration by the Customer of its requirements may result in delay in performance, delivery or availability for collection.

4.2 Any packaging supplied by Company, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of transport by the means specified in the contract or as may be otherwise agreed. If the Customer (or the intended recipient) fails to take delivery on the agreed delivery date or to collect on the agreed collection date or, if no specific delivery or collection date has been agreed, when the goods are ready for despatch, Company shall be entitled to store the goods and to charge the Customer the reasonable costs of so doing and to tender its account for such charges under condition 5. Notwithstanding the terms of condition 7.1 below, Company shall be under no liability in respect of any loss or damage following the despatch of any goods from Company's premises.

4.3 If Company and the Customer shall agree that any goods shall be delivered electronically or via any form of telephony ('Direct Delivery') the following provisions shall as applicable apply:

4.3.1 the Customer acknowledges that Direct Delivery is not or may not be a completely secure medium of communication and that an unauthorised third party may intercept, tamper with or delete goods delivered by Direct Delivery and that Direct Delivery may involve reliance upon third party data carriers over which Company has no control; and

4.3.2 Company shall not be responsible for and shall have no liability to the Customer or any third party for:

4.3.2.1 any delay to any Direct Delivery or any non receipt of any goods delivered by Direct Delivery;

4.3.2.2 any loss or damage that results from any person gaining unauthorised access to any Direct Delivery of any goods;

4.3.2.3 use or disclosure of any data obtained by any third party as a result of the same having gained unauthorised access to any Direct Delivery; and

4.3.2.4 any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, Trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any Direct Delivery.

## Terms of Payment

5.1. Subject to condition 5.2. and unless otherwise agreed by Company in writing, all invoices rendered by Company are payable as per invoice terms

5.2. Company expressly reserves the right at its sole option to require payment by instalments during the performance of the contract and/or payment of all amounts owing to Company immediately prior to delivery.

5.3. The Customer shall pay all amounts owing to Company in full and shall not exercise any rights of set off or counterclaim against invoices submitted.

5.4. In the event of default in payment by the Customer, Company shall be entitled to exercise any right or remedy available to it under any applicable law, including, without limitation, to suspend any further performance of or deliveries under any contract or contracts between Company and the Customer without notice and to charge Statutory Interest on any amount outstanding at the rate of 8% above the residing Bank of England Base Rate, on all overdue invoices, from the date the invoice becomes due to final settlement. Any enforcement action issued in order to recover outstanding monies is at our discretion and all costs shall be borne by the Customer/Debtor.

## Cancellation

6.1 Any contract between Company and the Customer may only be cancelled or varied with the written consent of Company and upon the terms of these conditions. The giving of Company's consent shall not in any way prejudice Company's right to recover from the Customer full compensation for any loss or expense arising from such cancellation or variation.

6.2 If notwithstanding condition 6.1 and without prejudice to any other rights or remedies available to Company, the Customer shall give Company notice of cancellation of an order which notice is received by Company:

6.2.1 less than 24 hours prior to, as applicable, the date for performance or the commencement of performance or the date on which the applicable facilities were to be utilised by or on behalf of the Customer (the 'Contract Date'), Company shall be entitled to charge the Customer the full contract price or, if none is stated, the applicable amount under Company's rate card current at the Contract Date; and

6.2.2 less than five working days but more than 24 hours prior to the Contract Date, Company shall be entitled to charge the Customer one half of the contract price or, if none is stated, one half of the applicable amount under Company's rate card current at the Contract Date in each case reflecting the fact that Company is unlikely to be able to secure an order for the facilities that had been allocated to the processing of the Customer's order from a third party within the time available.

## Liability

7.1 The Customer hereby agrees that without limiting any other provision of these conditions:

7.1.1 to the maximum extent permitted by law Company's entire liability for breach of any provisions of the contract, or any terms, warranties or conditions implied in

the contract by operation of law, including Company's liability for negligence (except where such negligence results in death or personal injury) are excluded; 7.1.2 under no circumstances shall Company be liable for any consequential loss whatsoever (including damages for loss of business profits, business interruption or other indirect pecuniary loss of any kind);

7.1.3 Company's entire liability for any direct loss suffered by the Customer, as a result of Company's breach of the contract and for which Company shall notwithstanding any other provision of the contract be liable, shall (subject to the terms of conditions 4.2, 4.3 above and 9.1 below) be limited to the amount actually paid by the Customer in accordance with the contract;

7.1.4 the price to be paid by the Customer under the contract reflects the limitation on the liability accepted by Company; and

7.1.5 this condition 7.1 is reasonable and necessary in the circumstances and that having regard to that fact, this condition does not work harshly or unreasonably against the Customer.

7.2 The Customer shall indemnify Company from and against:-

7.2.1 all claims or proceedings taken against Company by any third party including any client of the Customer, Company's employees, the Customer's employees or the employees of any contractor employed by the Customer or Company or the personal representatives or dependants of any such employee or other third party in respect of personal injury or damage to property caused by or arising out of any act or omission of Company in the course of carrying out the specific instructions of the Customer;

7.2.2 all claims or proceedings taken against Company arising out of the acts and/or omissions of the Customer, its agents or sub-contractors or any of their respective employees, whether negligent or otherwise.

7.3 The Customer expressly agrees that it will at all times maintain and keep effective insurance policies with reputable insurers with sufficient cover which protect the Customer against any loss or liability which it may incur or suffer arising out of the contract or any act or default of Company in the performance by Company of its obligations to the Customer. Such insurance shall include insurance for any damage or loss for which Company is not liable pursuant to the conditions hereof, insurance which protects the Customer against any accidental loss, damage or destruction to any master tapes, film negative prints, sound tapes, video tapes or visual images or sound held in any media or any other materials of any kind supplied to Company whilst in the possession or control of Company. Company accepts no liability for any liability or loss which arises from any failure by the Customer to maintain and keep effective such insurances.

7.4 Any recommendations or suggestions relating to the use of any goods supplied by Company are given in good faith but it is for the Customer to satisfy itself of the suitability of the goods for its own particular purpose. Accordingly unless otherwise expressly agreed in writing and notwithstanding and without limiting condition 7.1, Company gives no warranty as to the fitness of the goods for any particular purpose even though that purpose may be specified in the Customer's order and any implied warranty or condition (statutory or otherwise) to that effect is excluded.

7.5 In the case of goods or component parts of goods supplied by Company but not of Company manufacture, Company shall be entitled to assign to the Customer its rights against its supplier and such rights shall be taken in extinction of and in substitution for any rights which the Customer would otherwise have had

against Company.

## Intellectual Property and Data Protection

8.1 The Customer shall indemnify Company from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any defamatory or libellous matter or any infringement or alleged infringement of any patent, trademark, copyright, registered design or design copyright or other exclusive right including any moral right claim or any other title of any third party in respect of any work carried out for the Customer by Company.

8.2 Each of Company and the Customer acknowledge and agree that copyright in underlying materials processed by Company in the performance of its services and/or embodied in materials produced by Company may be owned by third parties and that the use by the Customer of all materials processed and/or produced by Company shall be subject always to the Customer obtaining any and all necessary licences and consents from the relevant underlying rights owner(s). The Customer hereby grants to Company a perpetual and royalty free licence to use all materials processed and/or produced by Company on the Customer's behalf to promote Company's business and in connection with appropriate industry awards.

8.3 Without limitation to the rights of Company at law, the Customer acknowledges and agrees that if, in the course of fulfilling the Customer's order and/or processing or producing materials on behalf of the Customer, Company discovers or devises any techniques or know how, all rights of every kind in and to such techniques and know how, shall vest absolutely in Company.

8.4 Company is an authorised data controller for the purposes of the Data Protection Act 1998 (the 'Act') under registration number Z54390974.

8.5 The Customer acknowledges that in the course of its dealings with Company, Company may acquire personal data which relates to the Customer and/or any of its officers, employees or contractors and the Customer hereby consents to Company, in accordance with its authorisation and the Act, collecting, storing, processing and transferring to third parties such personal data. The Customer further consents to the sale or transfer by Company of such personal data in connection with an assignment or transfer of any of its assets and its disclosure in compliance with any rule of law or order of competent authority.

8.6 The Customer's consents pursuant to this condition 8 are given by it for itself and on behalf of (if any) its officers, employees and contractors and the Customer hereby warrants to Company that it has the authority to give such consent on behalf of those persons.

## Customer's Materials

9.1 Where the Customer supplies any materials to Company or where any materials or goods which are the property of the Customer are otherwise left in Company's possession:-

9.1.1 notwithstanding the terms of condition 7.1. above, Company shall be under no liability in respect of any loss or damage or otherwise arising as a result of damage to or the loss or destruction of such materials or goods;

9.1.2 without limiting the terms of condition 7.3 above, the Customer shall insure all such materials or goods to their full value against all risks; and

9.1.3 the Customer shall remove all such materials or goods within six months of the date of issue of Company's invoice relating to such materials or goods in respect of which the materials have been utilised and in default, Company shall be entitled to return all such materials or goods to the Customer and to charge the Customer for any costs and expenses incurred by Company in so delivering such materials or goods. Until the removal or return of the materials or goods, Company shall be entitled to store the materials and goods and to charge the Customer the reasonable costs of so doing and to tender its account for such charges under condition 5. In the event that Company does not so return such materials or goods, Company shall be under no liability whatsoever for any loss or damage to such materials or goods whilst they are in the possession of Company and the Customer is advised to maintain insurance to the full value of such materials or goods against all risks.

9.2 Where materials are supplied or specific instructions are given by the Customer, Company accepts no liability for any reduction in the quality of Company's services caused by defects in or the unsuitability of such materials so supplied or by Company's adherence to such specific instructions.

## Risk and Title

10.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the goods the subject of the contract:-

10.1.1. if Company delivers the goods by its own transport or, in accordance with a specific contractual obligation, arranges transport for the goods at the time when the goods or a relevant part thereof arrive at the place of delivery; or

10.1.2. in all other circumstances, at the time when the goods or a relevant part thereof leave the premises of Company, or

10.1.3. if risk otherwise passes in accordance with the conditions hereof.

10.2 Title to the goods the subject of the contract or any relevant part thereof shall only pass to the Customer upon the Customer paying to Company all sums due and payable by it to Company under the contract and all other prior contracts between Company and the Customer.

10.3. Company may recover goods in respect of which title has not passed to the Customer at any time.

10.4 Until title to the goods has passed to the Customer pursuant to the terms hereof:

10.4.1. it shall possess the goods as a bailee of Company on the terms of these conditions;

10.4.2. if Company so requires the Customer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to Company;

10.4.3. the Customer shall be entitled to re-sell or use the goods in the ordinary course of its business but shall account to Company in respect of the proceeds of sale or otherwise of such goods;

10.4.4. the Customer shall maintain records of the persons to whom it sells or disposes of the goods and of the payments made by such persons for such goods and will allow Company to inspect those records on request; and

10.4.5. Company shall be entitled to trace the proceeds of sale or otherwise of the goods.

10.5 the Customer hereby irrevocably authorises Company, its officers, employees and agents to enter upon any premises of the Customer for the purpose of repossessing any goods in respect of which title has not passed to the Customer and/or to ensure that the provisions of this condition 10 are being complied with.

#### Customer input and access to/use of Company's premises and equipment

11.1 The Customer shall be solely responsible for ensuring that all information, advice and recommendations given to Company either directly or indirectly by the Customer or by the Customer's agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by Company of such information advice or recommendations shall in no way limit the Customer's responsibility hereunder unless Company specifically agrees in writing to accept responsibility.

11.2 The Customer hereby undertakes to Company to ensure that all of its personnel (to include all employees and agents of the Customer) that shall at any time have access to any premises occupied by Company or at which any of Company's equipment shall be kept all such persons shall at all times:

11.2.1 observe all rules and regulations in force at the applicable premises to include health and safety regulations and any rules governing the use of equipment and/or facilities at the applicable premises;

11.2.2 keep confidential and not divulge or communicate or make any use of any confidential information (being any and all information which relates to and/or concerns the business or activities of Company and/or any customer of Company) which the applicable person shall become aware of as a result of being present at the applicable premises.

11.3 The Customer shall indemnify Company from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any breach or non observance of any provision of condition 11.2 by any of the Customer's personnel.

#### Insolvency

12. If the Customer shall become bankrupt or under the provisions of Section 123 of the Insolvency Act 1986 shall be deemed to be unable to pay its debts or compounds with its creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager or Administrative Receiver is appointed of all or any part of its assets or undertaking, Company shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to Company.

#### Force Majeure

13. In the event of the performance of any obligation accepted by Company being prevented, delayed, or in any way interfered with by any act of government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond Company's control, Company may at its option suspend performance or cancel its obligations under the contract without liability

for any damage or consequential loss resulting there from, such suspension or cancellation being without prejudice to Company's right to recover all sums owing to it in respect of goods delivered and costs incurred up to the date of the suspension or cancellation.

#### Sub-contractors

14. Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any contract between Company and the Customer.

#### General

15.1 The Customer shall observe the provisions and requirements of all applicable trade union agreements and shall indemnify Company against any costs, expenses or loss incurred by it as a result of any failure by the Customer to do so.

15.2 Where appropriate and required by Company (but not otherwise), screen credits shall be given to Company and nominated individuals for all goods, services or facilities supplied by Company.

15.3 Headings used in these conditions are purely for ease of reference and do not form any part of or affect the interpretation of these conditions.

15.4 Nothing in these conditions shall operate to relieve Company from any liability for any fraudulent misrepresentation made to the Customer at any time.

15.5 If any provision of this contract as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this contract or the validity or enforceability of this contract generally.

15.6 References to Company shall, as the context permits, include its licensees, sub contractors and assigns.

15.7 References to goods shall include any and all forms of audio and audio visual material processed and/or produced by Company on the Customer's behalf such as advertisements.

15.8 The words 'include' and 'including' shall not be construed restrictively.

15.9 Unless otherwise notified in writing, the Customer allows Company to use finished projects for all PR & marketing purposes after the first date of transmission.

#### Legal

16. The contract shall be governed and interpreted exclusively according to the Law of England and shall be subject to the jurisdiction of the English Courts only.