

## **DIRECT SOLUTIONS**

### **Terms and Conditions**

#### **(Business Customers Only)**

#### **1. Definitions**

- a. 'DS' means Direct Solutions, the trading name of I T Solution Services Limited (Co. Reg. No. 04154363) having its registered office at 4 Faraday Close Oakwood Industrial Estate Clacton on Sea Essex CO15 4TR
- b. 'Customer' means the party contracting with DS to acquire the goods and services supplied under these terms and conditions.
- c. 'Carrier' means the postal carrier nominated by the Customer to distribute the customer's mailshots and other items.
- d. 'Direct Mailing' means DS's service of printing and delivering to the Customer's chosen carrier mailshots and other items.
- e. 'Electronic File' means any text, illustration or other matter supplied or produced by DS or the Customer in digitised form on disc, through a modem, or by ISDN or any other communication link.
- f. 'Insolvency' means the Customer is in a position where it is unable to pay its debts or has a winding up petition issued against it or has a receiver, administrator or administrative receiver appointed to it or being a person who commits an act of bankruptcy or has a bankruptcy petition issued against him.
- g. 'Intermediates' means all products produced during the manufacturing process (including non-exhaustively discs, film, plates, intellectual property).
- h. 'Periodical Publications' means publications produced at (normally regular) intervals.
- i. 'Preliminary Work' means all work done in the concept and preparatory stages, (including contract design, artwork, colour matching).
- j. "Work" means all goods (by way of intermediate or finished product) and services supplied by DSL to the Customer.

#### **2. Payment**

- a. Estimates are based on DS's current costs of product (and unless otherwise agreed in writing are subject to amendment to meet any rise or fall in such costs that have taken place by the time of delivery).
- b. Estimates are given exclusive of VAT and DS reserves the right to charge and the Customer will pay any VAT or other tax payable.

- c. All work carried out will be charged for. This includes all Preliminary Work whether or not the Customer agrees to that work being taken forward to production.
- d. Any additional work required of DS by reason of the Customer supplying inadequate copy, incomplete or incorrect instructions or insufficient materials, or late delivery of the same will be charged for.
- e. Payment will become due 14 days after date of invoice . (DS at its absolute discretion, may ask for part or full payment in advance of starting the Work). Postage for Direct Mailing must be paid for in advance of collection of the Work by the Carrier.
- f. If any item(s) remain unpaid by the due date interest will be charged, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In addition, *all* invoices will become due and payable immediately and will be treated as overdue items, with appropriate charges applied and all costs reasonably incurred in collecting the debt payable by the Customer.
- g. Unless otherwise agreed in writing, the price of the Work will be “ex-works” and delivery will be charged extra.
- h. Should the Work be suspended or delayed by the Customer for any reason DS will be entitled to charge for storage and for loss of or wastage of resources that cannot otherwise be used.
- i. Should the suspension or delay in 2(h) above extend beyond 30 days DS will be entitled to immediate payment for work already carried out, materials specially ordered and any other additional costs.

### **3. Credit Facilities**

Where credit facilities are granted DS reserves the right to withdraw them at any time, without having to give reasons and, in such a case, all outstanding invoices become due and payable immediately.

### **4. Delivery**

- a. Delivery of the Work shall be accepted when tendered.
- b. Unless otherwise agreed in writing completion and delivery times are a guide only. Whilst DS will make every effort to adhere to proposed timescales, time is not of the essence in any contract with the Customer.
- c. Unless otherwise agreed in writing (in which case an extra charge may be made) delivery will be to kerbside at the Customer’s address and the Customer will make arrangements for off-loading and for any additional transportation to its storage facility.
- d. Subject to any agreement under 4(c) above, delivery involving difficult access and/or unreasonable distance from vehicular access will entitle DS to make an extra charge to reflect its extra costs.

- e. Should expedited delivery be agreed DS will be entitled to make an extra charge to cover any overtime or any other additional costs.

## **5. Materials supplied or specified by the Customer**

### **5.1 Electronic Files**

- a. It is the Customer's responsibility to maintain a copy of any original Electronic File provided by the Customer.
- b. DS shall not be responsible for checking the accuracy of data supplied, from an Electronic File unless otherwise agreed in writing.
- c. Without prejudice to clause 5.2(b), if an Electronic File is not suitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action DS may make a charge for any resulting additional cost incurred or may reject the file without prejudice to its rights to payment for work done/material purchased.

### **5.2 Other materials**

- a. Materials owned by the Customer and supplied to DS for the production of electronic files and the like shall remain the Customer's exclusive property. However where the content is generated by DS, DS may, in order to protect its intellectual property rights and at its absolute discretion replace such material with unused material of a similar or better quality.
- b. DS may reject any discs, electronic files or other materials supplied or specified by the Customer which appear to it to be unsuitable for the purpose intended. Additional cost incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by DS in ascertaining the unsuitability of the materials then that amount shall not be charged to the Customer.
- c. Without prejudice to clause 5.2.b where materials are so supplied or specified, and DS advises the Customer, and the Customer instructs DS in writing to proceed anyway, DS will use reasonable endeavours to secure the best results, but will have no liability for the quality of the end-product(s).
- d. Quantities of materials supplied are to be adequate to cover normal spoilage. Any costs incurred as a result of shortages, including re-starting jobs, duplicating masters etc will be charged in addition to the estimated price.

### **5.3 Risk and storage**

- a. Customer's property and all property supplied to DS by or on behalf of the Customer shall while it is in the possession of DS or in transit to or from the Customer be deemed to be at the Customer's risk unless otherwise agreed in writing and the Customer should insure accordingly.

- b. DS will be entitled to make a reasonable charge for the storage of any Customer's property left with DS before receipt of the order or after notification to the Customer of completion of the work.

#### **5.4. Finished Goods**

- a. The risk in the Work and all goods delivered in connection with the Work will pass to the Customer on delivery to the Customer or (in the case of Direct Mailing to the Carrier) and the Customer should insure accordingly.
- b. On completion of the Work, DS will store the Customer's materials and Work for a maximum of one month , after which time they will be destroyed without further notice or returned to the Customer at DS's option.

#### **6. Materials and equipment supplied by DS**

- a. Materials owned by DS and used in the production of intermediates, electronic files and other production processes, together with items thereby produced, will remain DS's exclusive property.
- b. Discs, electronic files and other work will be destroyed immediately the order is executed unless written arrangements are made to the contrary. In the latter event, storage shall be charged.
- c. DS will not be obliged to download any digital data from its equipment or supply the same to the Customer on disc, tape or by any communication link.

#### **7. Retention of Title**

- a. The Work remains the property of DS until the Customer has paid for it and discharged all other debts owing to DS.
- b. If the Customer becomes subject to Insolvency and the Work has not been paid for in full DS may take the goods back, and if necessary, enter the Customer's premises to do so, or to inspect and/or label the goods so as to identify them clearly.
- c. If the Customer sells the goods before they have been paid for in full he shall hold the proceeds of sale in trust for DS in a separate account until any sum owing to DS has been discharged from such proceeds.
- d. Where the Customer is in breach of these Terms or performs any act of bankruptcy or Insolvency DS reserves the right to approach the Customer's own customer and to offer the Work directly to them, notwithstanding the fact that this will involve advising the Customer's own customer that the Customer is in breach or in default.

#### **8. Proofs and variations**

- a. DS will incur no liability for any errors not corrected by the Customer where the Customer has been provided with proofs. The Customer's alterations and additional proofs necessitated thereby will be charged extra. When style, type or layout is left to DS's judgement, changes therefrom made by the Customer will be charged extra.

- b. Where the Customer specifically waives any requirement to examine proofs DS is indemnified by the Customer against any and all errors in the finished Work.
- c. Colour proofs. Due to differences in equipment, paper, inks and other conditions between colour proofing and production runs, a reasonable variation in colour between colour proofs and the completed job will be deemed acceptable unless otherwise agreed in writing.
- d. Variations in quantity. Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5 per cent for work being allowed for overs and unders the same to be charged or deducted, unless otherwise agreed in writing.

## **9. Claims and Liability**

### **9.1 Claims**

- a. Advice of damage, delay or loss of goods in transit or of non-delivery must be given in writing to DS and any carrier within three clear days of delivery (or, in the case of non-delivery, within 3 days of notification of despatch of the goods) and any claim in respect thereof must be made in writing to DS and the carrier within seven clear days of delivery (or in the case of non-delivery, within 7 days of notification of despatch). All other claims must be made in writing to DS within 14 days of delivery. DS will not be liable in respect of any claim unless these requirements have been complied with except in any particular case where the Customer proves that (i) it was not possible to comply with the requirements and (ii) the claim was made as soon as reasonably possible.
- b. If the Work is defective so that the Customer may in law reject it, the rejection must take place within 7 days of delivery of the goods, failing which the Customer will be deemed to have accepted the Work.
- c. In the event of all or any claims or rejections DS reserves the right to inspect the Work within seven days of the claim or rejection being notified.

### **9.2 Liability**

- a. So far as is permitted by law where Work is defective for any reason, including negligence, DS's liability (if any) will be limited to rectifying such defect, or crediting the value against any invoice raised in respect of the Work.
- b. Where DS perform its obligations to rectify defective work under this condition DS shall not be liable for indirect loss, consequential loss or third party claims occasioned by defective Work and the Customer shall not be entitled to any further claim in respect of the Work nor shall the Customer be entitled to repudiate the contract, refuse to pay for the work or cancel further deliveries.
- c. Defective Work must be returned to DS before replacement or credits can be issued. If the subject Work is not available to DS, DS will hold that the Customer has accepted the Work and no credits or replacement Work will be provided.

- d. DS shall not be liable for indirect loss, consequential loss or third party claims occasioned by delay in completing the work or for any loss to the Customer arising from delay in transit, whether as a result of DS's negligence or otherwise.
- e. Where DS offers to replace defective Work the Customer must accept such an offer unless he can show clear cause for refusing so to do. If the Customer opts to have the work re-done by any third party without reference to DS the Customer automatically revokes his right to any remedy from DS, including but not exclusively the right to a credit in respect of Work done by DS.
- f. Where the Work will be forwarded by or on behalf of the Customer to a third party for further processing the Customer will be deemed to have inspected and approved the Work prior to forwarding and DS accepts no liability for claims arising subsequent to the third party's processing.
- g. DS reserves the right to reject any work forwarded to it after initial processing by a third party as soon as is reasonably practicable without processing the work any further. Should the Customer require DS notwithstanding to continue, then DS is only obliged to do so after confirmation from the Customer in writing.
- h. Nothing in these conditions excludes DS's liability for death or personal injury as a result of its negligence.

#### **10. Insolvency**

Without prejudice to other remedies, if the Customer becomes insolvent, DS will have the right not to proceed further with the contract or any work for the Customer and will be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Customer, such charge to be an immediate debt due to it. Any unpaid invoices shall become immediately due for payment.

#### **11. General Lien**

Without prejudice to other remedies, in respect of all unpaid debts due from the Customer DS shall have a general lien on all goods and property of or provided by the Customer in its possession (whether worked on or not) and will be entitled on the expiration of 14 days' notice to dispose of such goods or property as agent for the Customer in such manner and at such price as it thinks fit and to apply the proceeds towards such debts, and shall when accounting to the Customer for any balance remaining be discharged from all liability in respect of such goods or property.

#### **12. Illegal matter**

- a. DS shall not be required to print any matter which in its opinion is or may be of an illegal or defamatory nature or an infringement of the proprietary or other rights of any third party.
- b. The Customer shall indemnify DS in respect of any claims, costs and expenses arising out of the printing by DS for the Customer of any illegal or unlawful matter including matter which is defamatory or infringes copyright, patent, design or any other proprietary or personal rights. The indemnity shall include (without limitation)

any amounts paid on legal advice in settlement of any claim that any matter is defamatory or such an infringement.

**13. Periodical publications**

A contract for the printing and/or mailing of a periodical publication may not be terminated by either party unless 13 weeks' notice in writing is given in the case of periodicals produced monthly or more frequently or 26 weeks' notice in writing is given in the case of other periodicals. Notice must be given after completion of work on any one issue. Nevertheless DS may terminate any such contract forthwith should any sum due thereunder remain unpaid.

**14. Force majeure**

DS shall be under no liability if it is unable to carry out any provision of the contract for any reason beyond its reasonable control including (without limiting the foregoing): Act of God; legislation; war; fire; flood; drought; inadequacy or unsuitability of any instructions, electronic file or other data or materials supplied by the Customer; failure of power supply; lock-out; strike or other action taken by employees in contemplation or furtherance of a dispute; or owing to any inability to produce materials required for the performance of the contract. During the continuance of such a contingency the Customer may by written notice to DS elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

**15. Data Protection**

- a. The Customer is hereby notified that DS may transfer personal information about the Customer to a Credit Agency in circumstances arising under Clause 2(f) above.
- b. DS will hold details on the Customer for administration and marketing purposes only. Data received from the Customer for production of the Work will be used and handled only for that purpose and will be destroyed by DSL on completion of the job.

**16. Law of Contract**

These conditions and all other express and implied terms of the contract shall be governed and construed in accordance with the laws of England and the parties agree to submit to the jurisdiction of the courts of England and Wales.

**17. Notices**

All specifications and notices relied on by either party and all variations of this agreement must be in writing and include a duly authorised signature.

**18. Severability**

All clauses and sub-clauses of this Agreement are severable and if any clause or identifiable part thereof is held to be unenforceable by any court of competent jurisdiction then such enforceability shall not affect the enforceability of the remaining provisions or identifiable parts thereof in these Terms and Conditions.

