

## **Terms and Conditions of Business - Datamail Midlands Ltd ("Datamail")**

These terms and conditions apply to any contract between Datamail and the person, firm or company (the "Customer") for the supply of goods and services by Datamail to the Customer and replace any previous terms and conditions and any practice or course of dealing previously applying between Datamail and the Customer.

### **1. Orders**

A quotation shall not constitute an offer. Quotations are valid for a period of 30 calendar days (subject to any extension at the option of Datamail). A quotation is based on information available to Datamail at the date of the quotation as to the Customer's requirements and is subject to sight of materials, data and any artwork to be supplied to Datamail by the Customer. An order constitutes an offer by the Customer to purchase the goods and services in accordance with these terms and conditions. All orders must be in writing and the Customer must ensure the terms of the order are complete and accurate. No contract shall exist between Datamail and the Customer where Datamail rejects the order. The contract between Datamail and the Customer for the supply of goods and/or services as set out in the quotation, order and these terms and conditions constitute the entire contract between Datamail and the Customer with respect to the goods and/or service. The Customer acknowledges that it has not relied on any statement, representation or warranty that is not set out in the quotation or in these terms and conditions. No variation to the contract shall be valid or effective unless made in writing and signed by all parties.

### **2. Customer's obligations**

The Customer shall be responsible for ensuring that the materials supplied by it or on its behalf to Datamail conform to specifications in the quotation and Royal Mail's, or any other carrier's as appropriate, requirements, are supplied punctually accompanied by a delivery advice note (stating the quantity and description of the materials supplied) on pallets, boxed, packed, clearly labelled and are sufficient to enable Datamail to deliver the correct quantity of goods allowing for normal wastage and spoilage. Datamail shall report any discrepancy to the Customer but shall not be responsible for any loss arising from the Customer's breach of these terms. All materials supplied by or on behalf of the Customer are at the Customer's risk whilst on Datamail's premises or in transit to Datamail's premises and the Customer is responsible for arranging adequate insurance cover for those materials. Any of the Customer's materials or any goods which remain in Datamail's possession after 10 days from the completion of any order will be subject to storage charges and/or Datamail reserves the right to destroy or dispose of all such materials at the Customer's cost. The Customer shall ensure that all information or materials provided to Datamail by it 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, Sales Promotion and Direct Marketing (cap code) and the Direct Marketing Association's Code of Practice and that any consumer mailing addresses provided to Datamail are cleaned against the Mailing Preference Service (MPS) files (unless it is agreed that this will be carried out by Datamail). The Customer shall indemnify Datamail against all costs, claims, liabilities, penalties and expenses (including any direct, indirect or consequential losses, legal and other professional costs and expenses) which Datamail may incur by reason of any goods or any materials supplied being or alleged to be illegal or infringing third party intellectual property right or being defamatory or obscene. The Customer shall ensure that any electronic data supplied to Datamail is clean, GDPR compliant, unadulterated, capable of being read and processed and does not contain any computer or electronic viruses or malware and shall indemnify Datamail in respect of any loss it may suffer as a result of any such electronic viruses or malware. In the event of the computer or electronic data supplied being corrupt, Datamail shall either require the Customer to supply clean unadulterated data which does not contain any computer viruses or malware or decontaminate the data itself but at the Customer's expense.

### **3. Supply of goods**

Datamail will use reasonable endeavours to ensure any goods to be produced by Datamail shall be materially as described in the specification agreed by the parties but reserves the right to amend the specification of the goods if required by any applicable law or regulatory requirement. In relation to any document of importance, Datamail advises the Customer to obtain an initial draft for review. The Customer's approval of drafts, proofs, copy, layouts or artwork and costs of production will be Datamail's authority to produce the mailings and any other materials and to despatch them. Datamail shall not be liable for any errors or omissions in such mailings and materials to the extent that they have been so approved.

### **4. Delivery of Orders**

The time for delivery shall not be of the essence. Datamail accepts no liability for any delays caused or contributed to by the Customer or by third party postal carriers. The Customer acknowledges that postage is an untracked, non-guaranteed service. Datamail may deliver the goods by separate instalments. Each separate instalment may be invoiced separately and, if so, shall be paid for in accordance with the contract. Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Datamail to deliver any one or more of the instalments in accordance with these terms and conditions, or any claim by the Customer in respect of any one or more instalment, shall not entitle the Customer to treat the contract as a whole as repudiated.

### **5. Charges and Payment**

The price payable by the Customer for the goods and/or services shall be that set out in any quotation as increased by these terms and conditions. All prices quoted are exclusive of VAT which is payable in addition by the Customer. The Customer agrees to pay for any additional work not included in the quotation (including, but not limited to the cost of collection or delivery of the Customer's materials or goods) and for any corrections or changes made after the first proof. Where the mailing is to be undertaken by post, the cost of postage shall be paid in cleared funds no later than 48 hours before the mailing is despatched (otherwise Datamail may delay the despatch and shall not be liable for any such delay) or Datamail shall use the Customer's own account with Royal Mail if available. Where the cost of postage is less than the amount paid by the Customer, Datamail may provide a credit for the Customer for its next mailing. Any other invoices will be paid on completion of the mailing within 30 days of the invoice date. Datamail reserves the right to charge interest at the rate provided by the Late Payment of Commercial Debts (interest) Act and Regulation 1998 on any overdue sums (from the date on which payment was due to the date on which payment is received).

### **6. Intellectual Property**

The intellectual property rights in any work created by or for Datamail in relation to this contract shall vest in Datamail.

### **7. Data Protection & GDPR**

The parties agree that Datamail is a data processor for the purposes of the Data Protection Act 1998 & GDPR 2018. Datamail warrants to the Customer that it has in place appropriate technical and organisational measures against accidental or unlawful destruction or loss of alteration to, unauthorised disclosure of or unauthorised access to any personal data. Datamail shall ensure that each of its employees, agents and subcontractors are made aware of their obligations with regard to the security and protection of personal data. All data processing shall be carried out, as agreed by both parties, in line with signed data processing agreements.

### **8. Liability**

Datamail's entire liability in respect of any breach of its contractual obligations or otherwise to the Customer (save for fraud, death or injury resulting from its own or that of its employees, agents or sub contractors negligence which shall be unlimited) shall be limited to the contract price (excluding postage and telecommunications costs). Datamail accepts no liability for any document that has been approved by the Customer or for any breach of warranty or condition not expressly agreed in writing. All conditions and warranties as to quality, fitness for purpose or otherwise are expressly excluded. Datamail will not be liable to the extent that any breach of its obligations has been caused, directly or indirectly, by the Customer or by any third party or for any indirect or consequential loss or damage, loss of profits or goodwill.

### **9. Termination**

Either party shall be entitled to terminate this contract by notice in writing to the other in the event of any material breach by the other party of any of its obligations under this contract which cannot be remedied, or where there is a possibility of remedy, where the defaulting party has failed to remedy the default within 14 days. Datamail shall be entitled to terminate this contract immediately by notice in writing in the event of the Customer's failure to pay in accordance with clause 5 or in the event of the Customer committing an act of bankruptcy or taking any steps leading to liquidation, making any agreement with its creditors or having a receiver or administrative receiver appointed over any of its assets. In the event of termination by Datamail under this clause, the Customer shall immediately become liable for any outstanding sums due from it to Datamail. If the Customer wishes to cancel the contract (other than for a breach of the contract by Datamail) then it will pay to Datamail a reasonable sum for any work carried out by Datamail prior to such cancellation together with a reasonable profit on the uncompleted portion of the contract. Where Datamail cancels the contract (other than for a breach of contract by the Customer) it will pay to the Customer all reasonable costs incurred by the Customer relating to that contract.

### **10. Miscellaneous**

10.1 Datamail shall be under no liability if it shall be unable to carry out any of the provisions of the contract for any reason beyond its control including (without limiting the foregoing) Act of God; legislation; war; fire; flood; drought; failure of power supply; lock out; strikes or other action.

10.2 Nothing in this contract shall be construed as to constitute either Datamail or the Customer to be the agent of the other and it shall not operate so as to create a partnership or joint venture of any kind between them.

10.3 No failure or delay by either Datamail or the Customer in exercising any of their rights under this contract shall be deemed to be a waiver of those rights. No waiver by either of them of any breach of the contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.4 If any provision of this contract proves to be illegal or unenforceable the remaining provisions shall continue in full force and effect.

10.5 A person who is not a party to this contract shall not have any rights to enforce its terms.

10.6 This contract is subject to English law and the parties agree to submit to the jurisdiction of the English courts in respect of any dispute arising under it.