

TERMS & CONDITIONS

CONDITIONS OF SUPPLY

1. Conditions:

1.1 These terms and conditions (the "Conditions") supersede all previous conditions, including any terms and conditions of the Buyer and shall not be superseded, varied or waived other than by the express written consent of the Seller and Buyer.

1.2 In the Conditions the following definitions shall apply:

- (a) Buyer means the party contracting with the Seller to acquire the Work;
- (b) Seller means MKS Graphics Inc (dba AlphaGraphics #4);
- (c) Work means all goods (including intermediate or finished goods) and services including print, mailing and design services;
- (d) Preliminary Work means all work done in the concept and preparatory stages including design, artwork and color matching;
- (e) Electronic File means any text, illustration or other matter supplied or produced by either party in digitized form on disc, through a modem or by ISDN or any other link;
- (f) Intellectual Property means all copyright, patents, trademarks and trade names, design rights, inventions, know-how and other intellectual property including applications for registration and the right to make such applications;

1.3 Any order or request for Work by the Buyer to the Seller shall be conclusive proof of the Buyer's acceptance of the Conditions.

2. Delivery:

2.1 The Seller shall not be liable for failure to deliver the Work (or any part of it) promptly. Although not liable, the Seller will continuously strive to achieve agreed upon deadlines. In the event of a projected delay, The Seller will be required to notify the Buyer in advance of any deadline issues and obtain approval for either deadline modification or offer order modification options.

2.2 The Work shall unless otherwise agreed in writing be delivered to the Buyer's address as advised by the Buyer in writing prior to dispatch and



the Buyer makes all arrangements necessary to take delivery of the Work including off-loading, further transportation and storage whenever tendered for delivery.

2.3 The Seller may deliver the Work by separate installments. Each separate installment shall be invoiced and paid for in accordance with the Conditions. The failure of the Buyer to pay for any one or more of the said installments on the due dates, shall entitle the Seller (at its sole option) without notice to suspend further deliveries of Work pending payment by the Buyer and/or treat this contract as repudiated by the Buyer.

2.4 It is the Seller's usual practice to specify the delivery address in writing but, unless so specified or otherwise agreed in writing, the price of the Work is ex-works and delivery will be charged extra. Delivery requirements other than in accordance with clause 2.2 including expedited delivery, difficult access and significant distance from vehicular access shall entitle the Seller to make additional charges.

3. Payment:

3.1 Estimates are based on the Seller's current costs of production and, unless otherwise agreed in writing, are subject to amendment to meet any rise or fall in such costs that occur prior to delivery.

3.2 Estimates are given exclusive of all taxes and the Buyer will pay (in addition to the price) all VAT and other taxes applicable.

3.3 All Work carried out shall be chargeable to the Buyer.

3.4 Any additional Work required by reason of the Buyer supplying inadequate copy, incomplete or incorrect instructions or insufficient material or late delivery of any of them shall be chargeable.

3.5 Unless credit facilities have been agreed in accordance with clause 4 payment shall become due 30 days from receipt of invoice.

3.6 If the Work is suspended or delayed for any reason other than the default of the Seller then the Seller shall be entitled to charge for storage and for loss or wastage of materials and other resources to the extent they cannot otherwise be used. In the event that such suspension or delay extends



for more than 30 days the Seller shall be entitled to immediate payment for all Work already carried out including materials and all additional costs.

3.7 The Buyer shall indemnify the Seller from and against all legal and other costs and fees incurred by or on behalf of the Seller in connection with the collection of any outstanding indebtedness owed by the Buyer to the Seller.

4. Credit:

4.1 If credit is granted by the Seller payment is due within 30 days of the date of your receipt of an invoice unless specified otherwise in writing. If any invoice remains unpaid by the due date interest and other charges will apply in accordance with section 5A and/or section 6 of the Late Payment of Commercial Debt (Interest) Act 1998 as amended and in addition to all invoices shall become due and payable immediately and in any event all costs reasonably incurred by the Seller in collecting payment of any invoices shall be payable by the Buyer.

4.2 Credit shall only be granted to applicants who complete the Seller's credit account application form and who satisfy the Seller's criteria from time to time applicable. Such facilities may be withdrawn by the Seller at any time without notice and without giving reasons in which event all invoices (whether or not otherwise due and payable) shall become due and payable immediately.

5. Materials Supplied or Specified by the Buyer:

5.1 Electronic Files.

5.1.1 The Buyer shall maintain a copy of all Electronic Files provided by the Buyer to the Seller.

5.1.2 The Seller shall not be responsible for checking the accuracy of supplied input from any Electronic File unless otherwise agreed in writing.

5.1.3 Without prejudice to clause 5.1.2 if an Electronic File is not suitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action the Seller may either reject the file or charge for any additional costs incurred in



taking such corrective action in each case without prejudice to its rights to payment for work done and materials purchased.

5.2 Other Materials.

5.2.1 Where the content of the Work is generated by the Seller it may at its absolute discretion (including in order to protect its Intellectual Property) replace any material supplied by the Buyer with materials of similar or better quality.

5.2.2 The Seller may reject any Electronic Files or other materials supplied or specified by or on behalf of the Buyer which the Seller considers unsuitable for the intended purpose and provide an alternate recommendations for the same.

5.2.3 Without prejudice to clause 5.2.2 where materials are so supplied or specified by the Buyer and the Seller so advises the Buyer of their unsuitability that the Buyer instructs the Seller to proceed anyway the Seller shall have no liability for the quality of the Work.

5.2.4 Quantities of materials supplied by the Buyer shall be adequate to cover normal spoilage and any costs incurred as a result of shortages, including re-starting jobs and duplicating masters will be chargeable.

5.3 Risk and Storage.

5.3.1 All property supplied to the Seller by or on behalf of the Buyer shall, while it is in the Seller's possession or in transit to or from the Seller, be deemed to be at the Buyer's risk unless otherwise agreed in writing.

5.3.2 The seller shall be entitled to make reasonable charges for the storage of client-supplied property which is required to be stored for a period of 30 or more days prior to commencement of the desired project. In addition, the seller shall be entitled to make reasonable charges for the storage of completed projects after notification to the buyer of completion of the work has been made..

5.3.3 The Buyer warrants to the Seller that the Buyer owns or has absolute rights to use all Intellectual Property and/or other



proprietary interests in all materials (including Electronic Files) supplied by or on behalf of the Buyer and shall indemnify the Seller in accordance with clause 13.2 in respect of any and all claims, costs and expenses arising.

5.4 Completed Projects.

5.4.1 Risk in the Work and all goods delivered in connection with it shall pass to the Buyer on dispatch.

5.4.2 On completion of the Work the Seller will store the Work and other materials for a maximum of one month after which time the Seller may destroy them without notice.

6. Materials & Equipment Supplied by the Seller:

6.1 All materials owned or supplied by or on behalf of the Seller in the production of any part of the Work shall remain the Seller's exclusive property.

6.2 Printed Materials shall be distributed and Electronic files, artwork & data files, will be stored on Sellers secure servers indefinitely. Electronic files, artwork and Data are retrieved only when a "reprint" is needed or "research" on said project is required.

6.3 The Seller shall not be obliged to provide any data from its equipment or supplied to the Buyer in any format.

7. Proofs & Variations:

7.1 The Work is undertaken by the Seller on the basis that proofs will be provided, diligently checked by the Buyer and approved prior to production of the Work and the Seller shall not be liable for any errors (including errors introduced by the Seller) not corrected by the Buyer where the Buyer has been so provided with proofs.

7.2 Alterations required by the Buyer (except to the extent caused by the default of the Seller) and additional proofs necessitated thereby shall be chargeable. To the extent that style, type or lay-out is left to the Seller's judgment changes therefrom made by the Buyer shall be chargeable.



7.3 Where the Buyer waives any requirement to examine proofs the Seller shall not be liable for any errors in the finished Work and shall be indemnified by the Buyer against all resulting losses.

7.4 Color proofs: due to differences in equipment, paper, inks and other conditions between color proofing and production runs it is hereby agreed and accepted by the Buyer that a reasonable variation in color between the proofs and the completed job will be acceptable (unless otherwise specifically agreed in writing).

7.5 Variations in quantity: estimates of quantity are conditional upon margins of 5% for Work being allowed for "overs" or "unders" which will be chargeable or deductible, unless otherwise agreed in writing.

7.6 The Seller may at any time change the specification of the Work as required to comply with any applicable safety or statutory requirements or which do not materially impair the function of the Work.

7.7 All implied and express terms, conditions and warranties relating to quality and/or fitness for purpose of the Work are excluded whether made by the Seller or its servants or agents or otherwise.

8. Insurance:

The Buyer acknowledges that it has read and fully understood the Conditions including specifically clauses 2, 5, 6, 7, 10 and 11 relating to delivery, risk, storage and exclusion of liability and acknowledges that it should insure such risks as it deems appropriate in all the circumstances.

9. Acceptance of Goods:

9.1 The Buyer shall be deemed to have accepted the Work upon delivery. The Buyer shall inspect all the Work within 48 hours of delivery and shall within 72 hours notify the Seller of any defects or if the Work is not in accordance with the contract.

9.2 In the case of damage, delay or loss of Work in transit or of non-delivery the Buyer shall so notify the Seller and the carrier within 72 hours of delivery (or, in the case on non-delivery, within 72 hours of notification of dispatch) and any claim must be made in writing to the Seller and the carrier within



5 days of delivery (or, in the case of non-delivery, within 7 days of notification of dispatch).

9.3 If the Buyer properly rejects any Work that is not in accordance with the contract or is defective the Buyer shall nonetheless pay in full for all Work unless the Buyer promptly notifies the Seller of such rejection in accordance with clause 9.1 and returns all such Work to the Seller within 14 days of delivery (in each case time being of the essence).

9.4 The Seller shall not be liable in respect of any claim for damage, delay or loss of Work in transit or of non-delivery unless the Buyer promptly notifies the Seller in accordance with clause 9.2 and returns all such Work (except in the case of non-delivery) to the Seller within 14 days of delivery (in each case time being of the essence).

10. General Exclusion and Limitation:

10.1 The Seller shall be under no liability whatever to the Buyer for any consequential or indirect loss and/or expense (including loss of turnover and profit) suffered by the Buyer arising out of a breach of this contract or negligence by the Seller.

10.2 In the event of a breach of this contract or negligence by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the Work.

10.3 Neither Party shall be under any liability whatsoever to the other Party in respect of the following that are hereby expressly excluded, except insofar as such exclusions may be unlawful:

10.3.1 for injury, damage of any kind or nature, direct, indirect, consequential or contingent to personal property howsoever caused;

10.3.2 for any costs incurred without the prior written approval of the other Party to repair, replace, or carry out any work on any of the Work, defective or otherwise;

10.3.3 for any other damage, losses and/or costs (including loss of Work or any delays, loss arising from delay or due to or incurred by way of labor supplies, substitute purchases, liabilities to customers and third parties and all other such losses of any



nature) whether direct or indirect and whether or not resulting from or contributed to or aggravated by the default or negligence of either Party or its servants or agents or by any defect in the Work.

10.4 Where the Seller offers to replace defective Work the Buyer must accept such an offer unless it can show clear and reasonable cause for refusing to do so. If the Buyer opts to have the Work redone by any third party without notifying the Seller in writing then the Buyer automatically revokes his right to any remedies from the Seller including but not limited to the right to a credit/refund of the price.

10.5 Where the Work is to be forwarded by or on behalf of the Buyer to a third party for further processing the Buyer will inspect and approve the Work (and will be deemed to have so inspected and approved it) prior to forwarding and the Seller shall not be liable for claims arising subsequent to the third party's processing.

10.6 The Seller reserves the right to reject any Work forwarded to it after initial processing by a third party as soon as reasonably practicable without processing the Work any further and shall inform the Buyer the reason for such rejection. If the Buyer, notwithstanding such rejection, requires the Seller to continue, then the Seller shall only be obliged to so after confirmation from the Buyer in writing and the Seller shall have no liability for the quality of the Work.

10.7 Nothing in the Conditions shall exclude any liability for personal injury or death caused by the negligence of the Seller.

11. Cancellation:

11.1 The Buyer may cancel the order prior to completion of the Work in which event the Buyer shall pay to the Seller such charges as the Seller shall determine in respect of any materials ordered labor expended and other incidental expenses in connection with the order together with an amount equal to the Seller's reasonable estimate of its loss of profit from the order.

12. Reservation of Ownership:

12.1 Property, legal and beneficial, in any Work shall not pass to the Buyer until the Seller has received full payment for all sums then owed by the Buyer to the Seller.



12.2 Work in respect of which property has remained with the Seller shall be kept identifiable as the property of the Seller and the Buyer shall at the Buyer's own expense immediately return such Work to the Seller should the Seller so request.

12.3 Without prejudice to its other remedies, in respect of all debts due from the Buyer, the Seller shall have a general lien on all Work of the Buyer in its possession and shall be entitled, on the expiration of 14 days' notice to the Buyer, to dispose of such Work as agent for the Buyer in such manner and at such price as it thinks fit and to apply the proceeds of such disposal towards such debts and shall account to the Buyer for any excess.

13. Unlawful Matters:

13.1 The Seller may properly refuse to carry out any Work which is in its opinion or may be of an unlawful or defamatory nature or an infringement of the proprietary or other rights of any third party.

13.2 The Buyer shall indemnify the Seller in respect of any and all claims, costs and expenses arising out of any Work relating to any unlawful or defamatory matter or which infringes Intellectual Property or other proprietary or personal rights of any third party together with all costs on a full indemnity basis.

14. Periodical Publications:

A contract for the printing of a periodical publication may not be terminated by either party unless at least 13 weeks' written notice is given in the case of periodicals produced monthly or more frequently or 26 weeks' notice is given in writing in the case of other periodicals provided always that the Buyer shall in addition be liable for any materials purchased or other costs expended or provided for by the Seller acting reasonably in anticipation of future printing of such periodical and the Seller may terminate any such contract on 7 days' written notice if any sum due under it is outstanding and remains unpaid at the expiry of such notice.

15. Force Majeure:

The Seller shall not be liable for any claims, costs, damages or other losses suffered by the Buyer to the extent resulting from any failure on the part of the Seller, its servants and / or agents caused by or directly or indirectly due to war, terrorism, act of any Government or other competent authority, civil unrest, embargo,



computer system failure, storm, fire, accident, industrial action including strikes or lockouts, acts of God, illness, prevention from or hindrance in obtaining raw materials, energy or other supplies, or any other similar cause or matter beyond the reasonable control of the Seller.

16. Rights of Third Parties:

It is acknowledged and agreed by the Buyer that the Conditions are not intended to be and shall not be enforced by any person other than the Buyer under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available apart from the said Act.

17. Jurisdiction:

This contract is subject to the Laws of the State of Arizona, USA and the non-exclusive jurisdiction of the federal and state courts located in Arizona.

18. Design Services:

18.1 The Buyer shall provide a clear written specification to the Seller (including full details of the product to be designed and timescales) and will promptly respond to all enquiries raised by the Seller about such specification and the Buyer's requirements.

18.2 All Intellectual Property created by the Seller pursuant to this contract shall be the property of the Buyer provided always that the Seller shall be entitled to retain copies for the purposes of marketing and further design development.

18.3 If Buyer approves design created by Seller, the Seller shall be under no liability whatever to the Buyer in respect of any loss and/or expense suffered by the Buyer arising out of any design created or developed by the Seller which infringes or is similar to any design or design rights of any third party.

18.4 The Seller shall not be liable for any losses arising as a result of misquoted prices or incorrect coding or similar in websites designed by the Seller.

18.5 All design work (including website design) is undertaken by the Seller on the basis set out in clause 7.1 namely that the initial design of website will be diligently checked by the Buyer and approved prior to being finalized and being fully available to users and the Seller shall not be liable for any



errors (including errors introduced by the Seller) not corrected by the Buyer where the Buyer has been provided with the initial design for checking.

19. Mailing Services:

19.1 The Seller shall carry out only those services as specified in its estimate or as otherwise agreed in writing to include carriage, storage, packing or handling and the Seller shall be entitled to perform any such services by itself or by any subsidiary or associated companies or by any other persons.

19.2 The Buyer shall ensure that all materials supplied to the Seller conform to the specifications in the estimate, are supplied punctually, are accompanied by a delivery note stating accurately the quantity and description of the materials supplied, are delivered on pallets or otherwise properly packaged so as to withstand normal transport, storage and handling and are sufficient to enable the Seller to deliver the correct quantity allowing for normal wastage and spoilage.

19.3 The Seller shall check the materials supplied against the delivery note and shall report any discrepancy to the Buyer but the Seller shall not be responsible for any loss arising from any errors in the materials supplied nor shall it be required to check the contents of pallets or packages supplied by or on behalf of the Buyer.

19.4 The Seller is not a common carrier but shall be entitled to enter into contracts for carriage by any route or by any means and for storage, packing or handling by any persons at any place and for any length of time and all such other acts as may be necessary or incidental at the absolute discretion of the Seller to fulfill this contract.

19.5 Where in any circumstances the Seller acts as a principal in entering into a contract with any person for the carriage or handling of materials, the Seller is not itself a carrier for the purposes of any statutory or other provision or purpose nor does it make or purport to make any contract for the carriage or handling of any goods with the Buyer but nonetheless the Seller shall be entitled to the benefit of all exceptions and limitations in respect of the carrier or other persons handling materials contained in the Seller's contracts with any third parties and in any event the Buyer will not seek to impose on the Seller and the Seller shall not be under any liability greater than accepted by any carrier under any such contract.



19.6 The Buyer warrants to the Seller that all names, addresses and any other information supplied to the Seller in connection with the provision of mailing services is accurate and that the Buyer has full authority to use such data for the purpose of mailing and the Buyer will indemnify the Seller from and against all claims, costs and other losses arising from the Seller's use of the data in connection with providing the mailing services except to the extent that such losses arise from the fault of the Seller in cleaning or otherwise verifying the data provided always that the Seller shall be under no obligation to clean or otherwise verify any data provided to it by the Buyer except where such services are specifically requested and form part of the mailing services and which will be subject to a separate additional charge. Any cleaning or verification of data undertaken by the Seller will be subject to clause 7.1 namely on the basis that a proof will be provided, diligently checked by the Buyer and approved prior to the provision of the mailing services and the Seller shall not be liable for any errors (including errors introduced by the Seller) not corrected by the Buyer where the Buyer has so been provided with proofs.

19.7 In the event that solely due to the fault of the Seller any mailing is incomplete (including the omission of any enclosure) the remedies of the Buyer shall be limited in accordance with clause 10.2 or (if lesser) the cost of any additional postage or carriage incurred as a direct result of such fault.

20. Data Protection:

20.1 The Buyer warrants to the Seller that it has the absolute right to provide the personal data (if any) contained in materials supplied to the Seller in accordance with this contract and will indemnify the Seller from and against all claims, costs and expenses arising from any breach of this warranty or data protection legislation by the Buyer (including the cost of complying with any requests for information by third parties).

20.2 Any personal data may be stored by the Seller in providing its services to the Buyer but it is the practice of the Seller to destroy such data on completion of the contract.

