

1. Definitions and Interpretation

1.1 In this Agreement the following definitions shall have the following meanings:

“ AGREEMENT ”	the Quotation Form;
“ BUSINESS HOURS ”	8.30am to 5pm Monday to Friday excluding bank and public holidays;
“ CONFIDENTIAL INFORMATION ”	all information relating to either ODS or the Customer (including but not limited to information in respect of the Services (or any of them)) which might fairly be considered to be of a confidential nature;
“ CREDIT CHECK ”	the credit check to be undertaken by ODS in accordance with this Agreement;
“ CUSTOMER DELIVERABLES ”	the information and/or data to be delivered to ODS by the Customer as set out in the Quotation Form and/or as may be required by ODS from time to time;
“ GOODS ”	the goods to be delivered as part of the Services as detailed in the Quotation Form;
“ DELIVERY DATE ”	the delivery date (if any) for the supply of the Goods as set out in Quotation Form;
“ EXCLUDED PRODUCTS ”	food, liquid, chemical, toxic, nuclear or inflammable products;
“ IPR ”	all trademarks, service marks, patents, know-how, copyright (including but not limited to copyright deriving from help guides, art and design work, drawings and all source code formats, templates and routines), design rights, registered designs, database rights together with any applications to register and exploit the same anywhere in the world;
“ PARTIES ”	the Customer and ODS;
“ PRINT GUIDES ”	the guides available upon request or via the Web Site which set out the criteria, format and specification of any art and/or design work submitted and/or prepared by the Customer in respect of any of the Services;
“ PRINT APPROVAL FORM ”	the standard ODS print authorisation form relating to the provision of Services which involve ODS printing;
“ PRICE ”	the costs set out in the Quotation Form and payable in accordance with this Agreement;
“ PRODUCTS ”	any product stored or delivered by ODS as part of the packaging and distribution services;
“ QUOTATION FORM ”	the quotation form provided by ODS and detailing the Services and the Price;
“ SERVICES ”	the services required by the Customer to be undertaken by ODS details of which are set out in the Quotation Form;
“ SITE ”	the address (if applicable) where the Goods are to be delivered as detailed in the Quotation Form or as otherwise stated on the Customer Purchase Order.

1.2 All references in this Agreement to the singular shall mean the plural and vice versa, all references to person shall include companies, partnerships and other organisations and all references to the masculine shall include the feminine and neuter and vice versa.

2. ODS's Obligations and Rights

2.1 Subject to this Agreement, ODS shall use its reasonable endeavours to:

- (a) carry out the Services.
- (b) deliver (if required) the Goods to the Site.

2.2 Any stated Delivery Date is an estimate only and time for delivery shall not be of the essence unless expressly agreed by ODS in writing.

2.3 ODS may, in its sole discretion, subcontract at any time any or all of its obligations under this Agreement to any third party/ies.

2.4 ODS shall (where applicable) use its reasonable endeavours to carry out its obligations pursuant to this clause in accordance with BSI 09002.

3. Customer's Obligations

3.1 The Customer shall complete in a timely manner the obligations set out in this Agreement.

3.2 The Customer acknowledges that ODS's ability to perform its obligations under this Agreement is dependent upon the Customer's full and timely co-operation with ODS and the accuracy and completeness of any information the Customer provides to ODS. The Customer shall without limitation:

- (a) forthwith upon request by ODS, provide ODS with originals of all permits, consents and/or other authorisations necessary or desirable to enable ODS and/or any of its sub-contractors to perform ODS's obligations hereunder;
- (b) appoint one or more representatives (as reasonably required by ODS) in connection with the Services and procure that such representative(s) shall provide professional and prompt liaison with ODS and possess the necessary expertise and authority to commit the Customer;
- (c) deliver the Customer Deliverables to ODS in accordance with ODS's reasonable instructions from time to time including without limit the Quotation Form and the any applicable Print Guide;
- (d) ensure that all Customer Deliverables delivered pursuant to clause 3.2(c) above are in a format, style and content approved by ODS;
- (e) ensure that the Customer Deliverables are free from all viruses and/or corruptions;
- (f) forthwith (but in any event within 5 days) notify ODS of any problem, error or complaint in respect of the Goods and/or the Services giving full details of such problem, error or complaint;
- (g) return any sample and/or proof to ODS as soon as possible and immediately notify ODS of any concern and/or problem with such sample and/or proof.

3.3 The Customer accepts that whilst ODS will take steps to ensure that all Goods are materially free of viruses and/or corruptions, the Customer should ensure that the Goods are first tested in an isolated testing environment.

3.4 The Customer shall be liable for any delays or failures to the implementation or carrying out of the Services caused

by the acts or omissions of the Customer. ODS shall be entitled to levy additional charges based on its then standard rates against the Customer for any and all costs, expenses and/or losses of any kind whatsoever suffered or incurred by ODS arising out of or in connection with any such delay(s).

- 3.5 Save as required by law the Customer shall indemnify ODS and keep ODS at all times fully and effectively indemnified against any and all losses, damages, liabilities, demands, costs and/or expenses of any kind whatsoever suffered or incurred by ODS arising out of or in connection with any breach by the Customer of any of its obligations under this Agreement.
- 3.6 The Customer acknowledges and accepts that ODS shall be under no obligation to return the Customer Deliverables to the Customer. In the event that the Customer wishes ODS to return the Customer Deliverables to the Customer then it shall notify ODS in writing and shall (subject to ODS agreeing to return the same) pay ODS for all costs incurred in returning the same. ODS shall wherever reasonably possible keep Customer Deliverables not returned pursuant to this clause for a period of 90 days from receipt by ODS. The Customer shall be entitled to collect such Customer Deliverables from ODS on giving ODS no less than 7 days notice in writing. In the event that the Customer Deliverables have not been returned or collected by the Customer within the above time period then ODS shall be entitled to delete and/or destroy the Customer Deliverables without notice, obligation and/or liability to the Customer.
- 3.7 The Customer warrants that:
 - (a) the Customer Deliverables are at the time of delivery to ODS free of error, defect and/or fault;
 - (b) the use of the Customer Deliverables by ODS shall not infringe the rights of any third party including without limit intellectual property rights;
 - (c) the Customer Deliverables do not breach any laws and that they are not libellous, obscene or offensive.
- 3.8 The Customer shall (unless otherwise agreed on the Print Approval Form) provide ODS with an integral proof of any printing work prior to ODS undertaking the Services. ODS shall not be under any obligation to undertake the Services until such integral proof has been provided. Without prejudice to any limitations of liability set out under the Print Approval Form, the Customer acknowledges and agrees that ODS shall not be liable for any variation and/or deterioration in colour and/or quality of any Goods provided without an integral proof.
- 3.9 The Customer acknowledges and accepts that whilst the Company will use its reasonable endeavours to ensure that the Goods provided by ODS match the quantity required in the Quotation Form, ODS shall be entitled to a margin of error [without further obligation or liability] of 8% for quantities of up to and including 50,000 and 5% for quantities required in excess of 50,000.
- 3.10 The Customer acknowledges and accepts that ODS may undertake a Credit Check before agreeing to provide the Services or during the course of providing the Services. ODS currently use Euler Hermes to carry out Credit Checks. If the Customer requires access to the results of any Credit Check undertaken by ODS then it should write to the ODS Finance Department. ODS confirms that it will only use the results of a Credit Check for the purpose of deciding whether or not to provide or continue to provide the Services or whether to require payment in advance.
- 3.11 This clause 3.11 is specific to the Packaging and Distribution Services only.
 - (a) The Customer shall forthwith upon request by ODS, provide ODS with originals of all permits, consents and/or other authorisations necessary or desirable to enable ODS and/or any of its sub-contractors to perform ODS's obligations hereunder;
 - (b) The Customer warrants that the Products do not include any Excluded Product;
 - (c) The Customer shall ensure that the Products contained therein comply with all applicable legislation including without limit any packaging, security, environmental or health and safety regulations;
 - (d) The Customer shall ensure that all duties and/or taxes have been paid on the Products.

4. Price and Payment

- 4.1 ODS reserve the right to amend the Price for reasons beyond its reasonable control.
- 4.2 The Price does not include value added tax payable in respect of the Services, Goods and any additional charges levied hereunder which shall be payable by the Customer in addition and in the manner and at the rate from time to time prescribed by law.
- 4.3 Subject to clause 4.5, the Customer shall (unless otherwise agreed in writing by ODS) pay the Price within 30 days of the date stated on the applicable invoice. For the avoidance of doubt, ODS shall not be obliged to carry out any of the Services if the Customer owes any money to ODS (under this or any other Agreement).
- 4.4 ODS reserves the right to charge the Customer interest in respect of the late payment of any sum due under this Agreement (as well after as before judgment) at the rate of 4 per cent. per annum above the base rate from time to time of Nat West Bank plc from the due date until payment.
- 4.5 ODS shall (at its absolute discretion) be entitled to request payment (in whole or part) in advance of the Services.

5. Title, Risk and Inspection of the Goods

- 5.1 Title to the Goods shall not pass to the Customer until the date that the Price for the Goods and value added tax thereon has been paid in full to ODS.
- 5.2 If either:
 - (a) the Customer fails to effect payment in full of all sums due hereunder by the due date; or
 - (b) prior to the said due date the Customer enters into liquidation, bankruptcy or other insolvency procedure, whether compulsorily or voluntarily, other than for the purposes of reconstruction or amalgamation.then ODS (without prejudice to any other legal remedies it may have) shall at any time thereafter be entitled to enter upon the Site on notice to the Customer and remove the Goods.

- 5.3 All IPR in any work produced by ODS (including without limitation any documentation, manuals, bespoke software, fixes, modules and any specification) shall remain vested in ODS.
- 5.4 Risk in the Goods shall pass to the Customer upon delivery to the Site.
- 5.5 The Customer must inspect the Goods immediately upon delivery (or in the event that the Customer is responsible for collection of the Goods – at the time of collection). The Customer shall notify ODS within 5 days of receiving and/or collecting the Goods (as the case maybe) of any problem and/or complaint with the Goods. In the event that the Customer fails to notify the customer of any problem and/or complaint within the aforementioned time then the Customer shall be deemed to have accepted and approved the Goods.
- 5.6 In the event that the Customer indicates within the time frame set out in clause 5.5 that there is a problem and/or complaint in respect of the Goods then it shall:
- provide such evidence of the problem and/or complaint as ODS may require (including the delivery at its own cost of any samples);
 - allow ODS a reasonable time to consider such complaint and/or problem.
- 5.7 In the event that a complaint and/or problem reported pursuant to this Agreement is agreed by the Customer or upheld by a court of competent jurisdiction then the provisions of clause 9 shall apply.
- 5.8 Risk in the Customer Deliverables shall remain with the Customer at all times. ODS shall not be liable for any loss, damage, claim and/or cost incurred by Customer as a consequence of any loss or damage by ODS to the Customer Deliverables.
- 6. Termination and Suspension**
- 6.1 ODS may terminate this Agreement (in respect of all or any of the Services and/or Goods) immediately and without notice if:
- the Customer breaches any of its obligations under this Agreement and if capable of remedy fails to remedy within 5 days of receipt of notice in writing from ODS requiring it to do so;
 - the Customer becomes insolvent or unable to pay its debts, bankrupt or placed in the hands of a receiver or administrator or wound up.
- 6.2 In the event of termination of this Agreement for whatever reason:
- the Customer will pay ODS all sums outstanding up to the date of termination; and
 - both Parties will continue to respect and uphold all confidentiality and IPR obligations.
- 6.3 ODS reserves the right to suspend some or all of the Services forthwith if:
- it has reason to believe that the Customer is or is likely to misuse the Goods and/or Services;
 - it is required to do so by law;
 - the Customer should fail to pay any part of the Price and/or any additional charges levied hereunder by the due date;
 - it requests a Credit Check and either it has not received the result of such Credit Check or ODS is not satisfied with the result of a Credit Check;
 - the Customer has failed to comply with this or any other agreement to which the Customer and ODS are a party.
- 7. Confidential Information.**
- 7.1 Each Party will not use the other Party's Confidential Information other than for the purposes provided in this Agreement and will keep in confidence the other Party's Confidential Information made available to it; provided, however, that such restriction on disclosure shall not apply to any information that:
- is in the public domain through no fault of the Party receiving the disclosure;
 - was known to the receiving Party prior to disclosure by the disclosing Party;
 - is or was disclosed to the receiving Party by a third party that was not under similar confidentiality provisions; or
 - is required to be disclosed by applicable law order of any governmental authority of competent jurisdiction.
- 7.2 Each Party shall be responsible for its own employees with respect to ensuring that no Confidential Information will be disclosed.
- 8. Representations, Warranties and Limitations.**
- 8.1 This clause 8 and clause 9 sets out ODS's entire liability to the Customer and all other liability is hereby excluded.
- 8.2 Subject to this Agreement, ODS shall be liable to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of ODS or its employees, agents and subcontractors subject to a maximum of the monies paid by the Customer in respect of the Goods.
- 8.3 ODS warrants that it will carry out the Services and prepare the Goods materially as described in the Quotation Form.
- 8.4 ODS shall perform the Services with reasonable care and skill.
- 8.5 ODS disclaim and the Customer waives all other warranties, express or implied, with respect to the Services and/or Goods, arising by law or otherwise, including, without limitation any implied warranty of satisfactory quality, fitness for a particular purpose and any obligation, liability, right, remedy, claim in tort, notwithstanding any fault, negligence (but excluding fraudulent misrepresentation), strict liability or product liability of ODS (whether express or implied).
- 8.6 Subject to clause 8.8, ODS shall not have any liability to the Customer in respect of any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise), loss of profits, loss of anticipated savings, loss of business, loss of goodwill, loss or use or downtime, loss of or corruption to data or other information, any indirect, or consequential loss or damage or otherwise.
- 8.7 For the avoidance of doubt and without prejudice to the generality of the foregoing, ODS gives no warranty that:
- the Services and/or Goods are fit for the purposes required by the Customer;
 - that the Goods will operate or work in conjunction with the Customer's or any third parties equipment;

- (c) as to the integrity or accuracy of any data or information transferred by ODS to the Equipment. For the avoidance of doubt it is the responsibility of the Customer to back-up any information or data that is to be used and/or transferred on to its or a third party system or equipment and to check the accuracy and integrity of such information or data once it has been transferred.
- 8.8 Nothing in this Agreement shall operate to exclude either Parties liability for death or personal injury or fraudulent misrepresentation.
- 9. Remedies and Indemnification**
- 9.1 The Customer acknowledges that the following provision reflects a fair allocation of risk. Save as required by the Customer's exclusive remedy for ODS's default under this Agreement shall be (at ODS's absolute discretion) to obtain the repair, replacement or correction of the defective Services and/or Goods to the extent warranted under this Agreement. If such remedy is not economically or technically feasible or effective, then the Customer may obtain an equitable partial or full credit or refund of amounts paid with respect to the defective Services. The Customer acknowledges and accepts that in no event shall ODS be liable for any amount in excess of the amount paid by the Customer to ODS for the Services which gave rise to the claim or the amount paid by the Customer for the Services during the 12 months prior to the event which gave rise to the claim (whichever is the lower).
- 9.2 The Customer agrees that ODS are not liable under any circumstances for any delay, error or problem caused by any act or omission by the Customer and/or its subcontractors. ODS shall be entitled to levy additional charges based on its then standard rates for all reasonable expenses incurred as a consequence of such acts or omissions.
- 13. Waiver**
- The waiver by either Party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit or waive either Party's rights thereafter to enforce and compel strict compliance with every term and condition of this Agreement.
- 14. Notices**
- Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered forty eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid or forthwith upon receiving confirmation from the receiving Party either by facsimile, e-mail or by post.
- 15. Successors and Assigns**
- This Agreement shall be binding upon and inure to the benefit of the successors and assignees of the Parties. ODS may assign its rights or obligations hereunder at anytime.
- 16. Governing Law and Jurisdiction**
- This Agreement is governed by the laws of England and Wales and the Parties submit to the non-exclusive jurisdiction of the English Courts.
- 17. Severability**
- If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each Party as close as possible to that under the provision rendered unenforceable.
- 18. Entire Agreement**
- This Agreement together with (where required by ODS) a Print Approval Form constitutes the entire agreement of the Parties with respect to the subject matter hereof and all prior agreements with respect thereto are superceded. No amendment or modification hereof shall be binding unless in writing and duly executed by both Parties.
- 19. Third Party Rights**
- Except as otherwise expressly stated herein, nothing in this Agreement confers any rights on any person (other than the parties hereto) pursuant to the Contracts (Rights of Third Parties) Act 1999