

KALEIDOSCOPE

TERMS AND CONDITIONS

1. CONTRACT

- 1.1 Kaleidoscope trades exclusively on these terms and conditions of business.
- 1.2 No order placed with Kaleidoscope shall be binding on Kaleidoscope unless and until expressly accepted by Kaleidoscope, all such acceptances being subject to these terms and conditions.
- 1.3 Kaleidoscope shall not be bound by any terms and conditions set out in the Customer's Order with the exception of the specific details of any individual order such as size, quantity and finish, and these terms and conditions shall supersede and prevail over any other terms stipulated or referred to by the Customer.
- 1.4 No variation of these terms and conditions shall be of any effect unless expressly agreed to in writing by Kaleidoscope.
- 1.5 No previous correspondence, writings, telexes, faxes, telegrams or verbal communications between the Customer and Kaleidoscope shall perform any part of or be incorporated into the Contract.

2. PRICE

- 2.1 The prices set out in any quotation or price list issued by Kaleidoscope may be varied by Kaleidoscope at any time prior to the placing of the Customer's order. Any alteration by the Customer in design, quantities, specification or other instructions and any suspension of work following on the Customer's instructions or through any default of the Customer including failure to give timely instructions will give rise to adjustment of the price if Kaleidoscope's costs are thereby increased. In any such case, the price to be paid by the Customer shall be the price ruling at the date of delivery of the Goods and/or Services.
- 2.2 The Customer shall be liable to pay for all the Goods manufactured and the Services supplied by Kaleidoscope in accordance with the specifications and instructions supplied by the Customer notwithstanding that the Customer may have provided erroneous information within its specifications and instructions.
- 2.3 For the avoidance of doubt, all work carried out whether experimentally, or otherwise, at the Customer's instructions and request will be charged for.

3. PAYMENT

- 3.1 Payment, without any discount, set off, counterclaim, deferment on account of disputes or costs claimed, is due 30 days following invoice.
- 3.2 In the event of the Customer failing to make payment to Kaleidoscope pursuant to paragraph 3.1, above interest shall accrue and be paid by the Customer on all such unpaid sums at the rate of 3% per annum above the base rate of Midland Bank Plc at the date of invoice.
- 3.3 If the Customer fails to pay an instalment on the date it becomes payable, the whole of the balance of the price then outstanding shall become payable at once and Kaleidoscope shall be entitled to suspend work on any contract with the Customer pending payment of any monies outstanding.
- 3.4 Kaleidoscope reserves the right to demand security for payment at any time.
- 3.5 Kaleidoscope is entitled to exercise a lien (right to retain) on any Goods or chattels of the Customer which Kaleidoscope has in its possession until the Customer discharges all of its liability to Kaleidoscope under any Contract, and Kaleidoscope shall be entitled on the expiration of 28 days notice, given to the Customer, in writing, to dispose of such goods or chattels as Kaleidoscope thinks fit and to apply any proceeds of sale thereof towards the discharge of the Customer's liabilities to Kaleidoscope.

4. DELIVERY

- 4.1 Dates for delivery given by Kaleidoscope whether orally or in any document are approximate only and not of any contractual effect.
- 4.2 Unless otherwise specifically agreed, the Customer shall collect the Goods from Kaleidoscope's premises and delivery shall be deemed to take place when Kaleidoscope notifies the Customer that the Goods are available for collection.
- 4.3 Where Goods are to be delivered to the Customer, such delivery shall be by way of ordinary first class post and delivery shall be deemed to take place upon the Goods leaving Kaleidoscope's premises.
- 4.4 Where the Customer requests delivery of the Goods to be made in any manner other than referred to above Kaleidoscope reserves the right to make an additional charge in respect of the costs of delivery and delivery shall be deemed to take place upon the Goods leaving the Kaleidoscope's premises.
- 4.5 Late performance does not entitle the Customer to reject the Goods, terminate the Contract, withhold payment of all or any part of the contractual price, or claim damages whether direct or consequential in nature, before continuing with or delivering any order.
- 4.6 Where the Contract provides for delivery by instalments, Kaleidoscope shall be entitled to tender a separate invoice in respect of each instalment and payment shall become due upon the tender of each such invoice. Should payment not be forthcoming in relation to any invoice, Kaleidoscope shall have the right to withhold the delivery of future instalments until all payments are made.
- 4.7 Any complaint or claim arising from damage, delay, or partial loss of Goods, whether in transit or otherwise must be made in writing to Kaleidoscope so as to reach them within 48 hours of delivery. Claims for none delivery of Goods must be made within 28 days of the estimated date of delivery and all other claims must be made to Kaleidoscope within 7 days of delivery.

5. PASSING OF RISK

- 5.1 Risk in the Goods shall pass to the Customer when the Goods are delivered to the Customer in accordance with clause 4 thereof.

6. CANCELLATION

- 6.1 The Customer is not permitted to cancel this agreement except with the written consent of Kaleidoscope.
- 6.2 Where there is an agreed cancellation as permitted by paragraph 6.1 above, the Customer shall pay to Kaleidoscope a sum to be determined representing liquidated damages to compensate Kaleidoscope against all losses incurred as a result of this cancellation.

7. LIABILITY

- 7.1 Kaleidoscope accepts the Customer's films, negatives or other photographic materials for processing, duplicating or printing on the basis that their value and that of any prints or duplicates made from them does not exceed the current retail costs of the material itself. The liability of Kaleidoscope for loss or damage is limited to replacement of the material and no other liability for any consequential loss or indirect loss suffered by the Customer, howsoever caused will be accepted. Non-exhaustive illustrations of consequential loss and indirect loss are loss of profit, loss of contracts, damage to property of the Customer or anyone else.
- 7.2 Kaleidoscope shall be under no responsibility or duty to insure the films, negatives or other photographic material accepted from the Customer and the Customer is advised to arrange their own insurance in respect of such films, negatives, photographic material or originals if they have a value beyond that of the materials themselves.

8. COPYRIGHT

- 8.1 It is the Customer's responsibility to ensure that all material presented for processing is free from any third party claim of copyright.
- 8.2 The Customer certifies and warrants in respect of the materials presented for processing, printing, copying or duplicating or any other process of reproduction:-
 - 8.2.1 that no copyright exists in the materials; or
 - 8.2.2 that he is the owner of the copyright in the materials and that any reproduction by Kaleidoscope will not infringe the rights of any existing licensee; or
 - 8.2.3 that he has valid authority of the copyright owner (or of any existing licensee of the copyright owner) to authorise the reproduction of the material as required by the order.

9. GENERAL INDEMNITY

- 9.1 The Customer shall fully and effectually indemnify and keep indemnified Kaleidoscope in respect of any claims, damages, costs, expenses (including legal costs) whether of a consequential or indirect nature arising out of any claims against Kaleidoscope, as a result of execution of the Order placed by the Customer in accordance with the Customer's instructions.

10. SUSPENSION OF WORK

- 10.1 Kaleidoscope reserves the right to refuse to complete or undertake any work on behalf of the Customer if in Kaleidoscope's opinion, to carry out such work, would result in any claim of whatsoever nature against Kaleidoscope whether in respect of breach of copyright, breach of obscenity legislation or otherwise and to suspend such work and charge the Customer pro rata for work done in respect of the Customer's order to date. In such circumstances Kaleidoscope shall be entitled to exercise a lien over the Goods supplied until the pro rata charges rendered have been paid by the Customer.

11. ACCURACY OF SIZE AND COLOUR MATCHING

- 11.1 All sizes quoted are by way of guidance only and Kaleidoscope shall accept no liability for minor variations in size.
- 11.2 The Customer acknowledges that colour matching is subjective and while Kaleidoscope will endeavour to achieve the closest possible colour match within the limitations and materials and processes used, Kaleidoscope shall accept no liability for variations in colour matching.
- 11.3 If colour matching is essential for the Customer, the Customer will provide sample materials for use as matching guides to Kaleidoscope.

12. UNCLAIMED WORK

- 12.1 Any work not delivered in accordance with clause 4 above within 3 months of the date of delivery will be disposed of by Kaleidoscope without liability therefor.

13. ORIGINAL PHOTOGRAPHY CREATED BY KALEIDOSCOPE

- 13.1 Where the terms of the Customer's order require Kaleidoscope to create original photography, the copyright in such photographs will be the property of Kaleidoscope in accordance with the Copyright Designs and Patents Act 1988 and any subsequent Legislation. Kaleidoscope shall grant to the Customer at no additional charge, a Licence to reproduce the photography in any non-photographic form in any quantity and in any part of the world for a period of 3 years from the date of the invoice. Any photographic reproduction shall be carried out only by Kaleidoscope. Any extension to the Licence beyond the 3 year period shall be subject to negotiation and further agreement between the Customer and Kaleidoscope.

- 13.2 All materials on which original photographic images are created by Kaleidoscope, shall remain the property of Kaleidoscope and Kaleidoscope undertakes to file and store all such original material safely and to make them available for future reproduction. Where Kaleidoscope gives possession of original transparencies to the Customer such original transparencies shall nevertheless remain the property of Kaleidoscope and shall be given to the Customer on free loan for the duration of the Copyright Licence. Photographic prints (whether from negatives or transparencies) will become and remain the property of the Customer. However the Customer acknowledges that ownership of any physical materials such as prints and transparencies does not imply ownership of the copyright in the images on them (which remains the property of Kaleidoscope in accordance with paragraph 13.1 above) or any right to reproduce or authorise the reproduction of any such images by any photographic means.

14. INSOLVENCY/DEFAULT

- 14.1 If the Customer:
 - 14.1.1 has a Petition presented for its winding up,
 - 14.1.2 passes a resolution for voluntary winding-up (other than for the purpose of a bona fide amalgamation or reconstruction); or
 - 14.1.3 compounds with its creditors; or
 - 14.1.4 has a Receiver, Administrative Receiver or Administrator appointed over all or any of its assets; or
 - 14.2 Being an individual:
 - 14.2.1 becomes bankrupt or insolvent; or
 - 14.2.2 enters into any arrangement with his/her Creditors; or
 - 14.2.3 commits a serious breach of this agreement (and in the case of such a breach being remediable, fails to remedy it within 7 days after receiving notice to do so);
- 14.3 The price of all Goods invoiced and delivered and all work in progress shall immediately become due and payable to Kaleidoscope and in addition Kaleidoscope shall have the right in its absolute discretion to cancel or suspend forthwith any Contract subsisting with the Customer without prejudice to Kaleidoscope's rights to recover any loss or damage sustained.

15. SUBCLAUSES

- 15.1 Each of the subclauses in this Contract are to be treated as separate and independent.

16. FORCE MAJEURE

- 16.1 Kaleidoscope accepts no liability for any failure to deliver the Goods or provide the Services arising from circumstances outside Kaleidoscope's control.
- 16.2 Non-exhaustive illustrations of circumstances referred to in 16.1 above are Act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strike, lock-outs, Government action or regulations (U.K. or otherwise) delay by accidents, suppliers and shortage of materials, labour or manufacturing facilities.
- 16.3 If Kaleidoscope is prevented from delivering in the above circumstances it shall notify the Customer of the fact in writing within 10 days commencing with contractual delivery dates.
- 16.4 If the circumstances preventing delivery are still continuing 3 months from and including the date of delivery and Kaleidoscope sends such notice then either party may give written notice to the other cancelling the Contract.
- 16.5 If the Contract is cancelled in this way, Kaleidoscope shall refund any payment which the Customer has already made on account of the price (subject to deduction of any amount which Kaleidoscope is then entitled to claim from the Customer) but Kaleidoscope accepts no liability to compensate the Customer for any further loss or damage caused by the failure to deliver the Goods and/or provide the Services as the case may be.

17. LEGAL CONSTRUCTION

- 17.1 The construction and operation of this Contract and of any Contract between Kaleidoscope and the Customer is to be construed and governed in all respects and in accordance with English Law, and the parties hereto agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Contract.