

# Customer agrees to the following terms and conditions regarding work with Harmony Printing & Development Co.

## 1. ORDERS

All orders, instructions, and changes shall be confirmed in writing. Regularly entered orders shall not be cancelled except upon terms that will compensate Printer against loss, including allowances for normal overhead and profit. In the event Customer cancels an entered order, Printer shall have no obligation to release the paper to Customer; provided, however, in the event such paper is not suitable, in Printer's sole discretion, for Printer's other production needs, then Customer shall be obligated to accept delivery and pay for such paper prior to delivery.

## 2. PRICES

Charges for Printer's work are set forth in the price Schedule. Prices may be adjusted under Section 3, and whenever possible, Printer shall provide reasonable advance notice of price adjustments. Charges in quantities or specifications, including author's alterations, which result in additional costs will be charged to Customer at Printer's standard rates in effect on the date of such change, and, if such change(s) materially increase the pricing of the work, will subject credit terms to renegotiation. Printer shall not be required to comply with any quantity or specification changes requested by Customer which are not within Printer's capabilities.

Customer recognizes that the prices are exclusive of storage charges (see Section 12), and sales and other taxes. Any taxes imposed on Printer by federal, state, or local taxing authorities, on sales, manufacturing, processing, or selling, shall be added to the price paid by Customer.

## 3. PRICE ADJUSTMENTS

- If the time of performance of the work hereunder is unknown as of the date of this Agreement, then the prices herein which reflect Printer's labor costs are based upon current costs and shall remain firm through \_\_\_\_\_, 20\_\_\_\_, and such prices are subject to adjustment at any time after the date of this Agreement in proportion to any labor cost increases incurred by Printer.
- If any time after the date of this Agreement, Printer's cost of performance hereunder is increased due to increases in state or federal social security taxes or other taxes related to labor utilization, or to changes in governmental regulations, then the prices shall be adjusted in proportion to such increased cost of performance effective on the date of the cost adjustment to Printer.
- If at any time after the date of this Agreement, Printer's cost of materials for the work, including but not limited to, film, plates, paper, ink, adhesives, and energy or utilities shall increase over the cost as of such date, then the prices which reflect such cost shall be adjusted in proportion to such increase effective on the date of the cost adjustment to Printer.

## 4. PAYMENT TERMS

- Payment terms shall be 30 days from the invoice date unless other terms are confirmed in writing prior to acceptance of order by Printer. Past-due invoices are subject to a service charge of 1.5% per month on the outstanding balance. Upon Customer's notice to Printer pursuant to Section 14, disputed items shall not be subject to a service charge; provided, however, Customer shall not withhold payment of undisputed items. The foregoing service charge provision shall not be construed as a grant to Customer of an extension of time within which payment is required under this Agreement.
- Printer shall issue an invoice or invoices to Customer as follows:
  - Composition, preparatory work, plates, presswork, binding, mailing, freight, and shipping charges, and paper furnished by Printer — upon Printer's completion of the work, or upon passage of title (in case of deferred shipment), whichever occurs first.
  - Storage of materials furnished by Customer and of finished work produced by Printer — in advance on the first of each month for which such charge applies.
- In advance of the mailing date for work to be mailed, Customer shall deposit in the appropriate Postal Service office sufficient certified funds to cover all mailing costs.

## 5. PRODUCTION SCHEDULE

Subject to Section 14, Customer's delay in furnishing and/or returning promptly all copy, specifications, artwork, proofs, or other material in accordance with the Production Schedule may result in an extension of scheduled delivery date and/or additional charges to Customers for accelerated production at Printer's regular overtime rates. The schedule will be confirmed at time of order.

## 6. PROOFS

Printer shall furnish Customer the proofs and materials set forth in the Specifications Schedule, and Customer shall return to Printer one set of proofs for each completed page indicating any and all changes (editorial and art). Press standing time awaiting Customer's okay shall be charged to Customer at Printer's standard rates then in effect for press standing time. Printer shall not be liable for errors or subsequent corrective costs for work completed per Customer's okay or for errors due to Customer's failure to order proofs, refusal to accept proofs, failure to return proofs marked with charges, or Customer's instructions to proceed without submission of proofs.

## 7. MATERIALS FURNISHED BY CUSTOMER

Film (negatives and positives), and other materials furnished by Customer shall be properly packed, free from dirt, grit, or torn sheets and shall comply with the specifications and Printer's quality and manufacturing standards. Additional costs due to delays, impaired production, or the necessity to repair or replace such materials because of Customer's failure to meet such standards shall be charged to Customer at Printer's standard rates. Customer is responsible for independently seeking recourse from its suppliers with respect to such defective materials. Semifinished materials furnished by Customer shall include manufacturing waste allowances Printer deems adequate and shall be adjusted to Printer's count. Printer shall not be liable for the fitness of any materials furnished by Customer unless directed by Customer, at additional cost to Customer, to make corrections, repairs, or substitutions Printer deems necessary. In no event does Printer assume responsibility for the color fidelity of finished work made from film furnished by Customer unless proofed by Printer.

## 8. RESPONSIBILITY FOR PRODUCT

- Customer warrants that any matter it furnishes for reproduction does not infringe upon any copyright, trademark, or trademark, is not libelous, and does not otherwise violate any law. Customer agrees to indemnify and hold Printer harmless against all claims, damages, and expenses, including attorney's fees, which Printer may incur as the result of any claims of such violation or alleged violation.
- Customer shall be responsible for complying with all Postal Service requirements concerning the appropriate class of mail and with the Mailing Specifications Schedule. Printer shall not be liable to Customer for any damages or claims whatsoever because of Postal Service rejection of mail by reason of sortation errors in any manner attributable to Customer's noncompliance with the Mailing Specifications Schedule or applicable Postal service requirements. Unless otherwise stated in the Schedules that are a part hereof, special sorting, bundling, tagging, and/or bagging for presort discounts, multiple mail lists, or list merging will result in additional charges to Customer.

## 9. QUANTITY VARIATION

Variations in quantity of \_\_\_\_\_ % over and \_\_\_\_\_ % under quantities ordered shall constitute acceptable delivery, and the excess or deficiency shall be charged or credited at the additional thousands rate stated in the Price Schedule.

## 10. DISCLAIMER OF WARRANTIES

Printer warrants that the work shall be produced according to the terms of this agreement and standards acceptable in the printing industry, but no other express or implied warranty is made with respect to the work, by reason of differences in equipment, paper, inks, and other conditions between the color proofing and production press room operations. A reasonable variation in color between proofs and the completed job and a reasonable variation on press may exist.

## 11. DISCLAIMER OF WARRANTIES

Printer shall bear the risk of loss during the manufacturing process subject to the limitations and exclusions of its all-risk insurance coverage therefor. Customer specifically waives its rights of recovery against Printer for damage to customer-furnished property to the extent covered by Customer's insurance policies, if any, then in effect.

Artwork, drawings, sketches, dummies, film positives, negatives, and separations furnished by Printer shall become the property of Customer upon payment in full by Customer. All printing plates shall remain the property of Printer.

## 12. RISK OF LOSS

Title and risk of loss shall pass to Customer upon the earlier of Printer's delivery to carrier or Postal Service, or delivery into storage, regardless of whether the transport medium or storage facilities are owned and/or operated by Printer and regardless of whether Printer charges Customer for storage.

## 13. STORAGE

Charges for storage of finished and semifinished work produced by Printer or materials furnished by Customer shall be made to Customer at Printer's standard rates then in effect, including an in-and-out charge. Customer's materials which are in film form shall be stored without charge for a period of 18 months from the time of last use and thereafter destroyed unless claimed by Customer. Unless otherwise directed, finished and semifinished work produced by Printer and Customer-furnished inserts shall be stored for a period of 3 months after date into inventory and thereafter destroyed or otherwise disposed of unless claimed by Customer upon written notice from Printer. Upon Customer's request, Printer shall (unless Customer is in default) store materials other than film, and charges shall be applied monthly as follows:

- For materials furnished by Customer — on the first of the second month after date of receipt by Printer.
- For finished work produced by Printer — on the first of the first month after date into inventory.

## 14. CONTINGENCIES

Neither party shall be liable for any delay or failure to perform hereunder if such delay or failure to perform arises out of causes beyond its control including, without limitation, labor trouble; force majeure; governmental acts and regulations; inability to obtain materials, energy, or carrier space; unforeseen equipment breakdown; or delays of suppliers or carriers. The affected party shall give notice to the other party of such condition as soon as practicable after it arises.

If Printer's operations are suspended for any of the above causes, Printer shall use its best efforts to produce the work at another facility, subject to scheduling capacity and equipment capabilities. If this is not feasible in Printer's reasonable discretion, Customer shall have the right to have the work performed elsewhere; however, Customer shall not make arrangements to have the work performed elsewhere for a longer period than is reasonably necessary, and it is agreed that when Printer resumes operations, all subsequent work under this Agreement shall be returned to Printer subject to such prior arrangements. Customer shall have the right to remove from Printer's plant any and all work (whether or not completed), proofs, film, standing type, and other materials upon payment to Printer for all work and materials furnished or ordered by Printer to the date written notice of Customer's election to have the work completed elsewhere is received by Printer. Printer shall not be liable for any differences in costs and/or quality specified in this Agreement and those Customer obtains from another printer.

If shortages occur in Printer's supply of paper for reasons beyond its control, Printer may allocate its supply of paper among the customers for whom Printer is then performing work, in such manner and amount as shall, in Printer's judgment, fairly prorate the supply among them.

## 15. CLAIMS

All claims for defective or damaged work, erroneous charges, late delivery, or for shortages must be made by Customer in writing fully setting forth the nature of the alleged defect, damage, erroneous charge, late delivery, or shortage, within 30 days after Printer's shipment of the work. Customer's failure to so notify Printer shall constitute an irrevocable acceptance of the work and a waiver of any defect, damage, late delivery, or shortage. Transportation claims must be made by Customer directly against the carrier, but Printer shall provide reasonable assistance to customer in processing such claims.

## 16. LIMITATION OF REMEDIES

Customer's sole and exclusive remedy for Printer's negligence, breach, or any other claim arising out of or connected with this agreement shall be the return of the selling price paid for that portion of the work which is non-conforming or, upon mutual agreement, reprinting a correction in subsequent work. In no event shall Printer be liable for special, indirect, or consequential damage.

## 17. PRINTER'S RIGHTS UPON CUSTOMER'S DEFAULT

If during the term of this Agreement any amount due Printer from Customer under this or any other agreement shall remain unpaid at due date, or if Customer defaults in the performance of any covenant or condition of this Agreement, Printer shall have the right to terminate this Agreement, to declare immediately due and payable all obligations of the Customer for the work theretofore furnished by Printer under this Agreement, to retain possession of any work or materials (including but not limited to work-in-process and undelivered work) owned by Customer or furnished by or on behalf of Customer, to change credit terms with respect to any further work furnished by Printer, and to suspend or discontinue any further work until overdue amounts are paid in full and cash or security satisfactory to Printer covering further work, as may be required by Printer, is deposited in advance with Printer. The foregoing rights of Printer shall be in addition to and not in substitution for any other rights of Printer, and suspension of discontinuance of work by Printer pursuant to this section shall not in any way prejudice any claim or right of action which Printer may have by reason of any breach of this Agreement by Customer.

## 18. FINAL AGREEMENT

This Agreement, together with the schedules now or hereafter made a part hereof, is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of these terms of their agreement. All work performed by Printer for Customer shall be deemed to be only upon the terms and conditions contained in this Agreement, notwithstanding any terms and conditions that may be contained in any letter, purchase order, or other form of acceptancy by Customer.

## 19. AMENDMENT

Except as provided in Section 4, this Agreement and the schedules now or hereafter made a part hereof shall not be amended or altered in any manner unless such amendment or alteration is in writing and signed on behalf of the parties by their duly authorized representatives.

## 20. ASSIGNMENT

Neither party to this Agreement shall assign any right or rights hereunder without the prior written consent of the other party. Subject to this consent, this Agreement shall inure to the benefit of and shall bind the successors and assigns of the parties hereto.

## 21. OTHER PROVISIONS

Whenever either party in good faith has reason to question the other party's ability or intent to perform, it may demand adequate written assurance from the other party of its ability or intent to perform. In the event that a demand is made and no adequate assurance is given within 30 days or such other shorter period as the circumstances reasonably require, the demanding party may treat this failure as an anticipatory repudiation of this Agreement and suspend performance or exercise any other appropriate remedy. In the event of a sale of all or substantially all of the assets or stock of Customer, Printer shall have the option to change credit terms for work to be performed hereunder after receipt of such notice.

If either party makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or files a voluntary petition for bankruptcy or reorganization, or is adjudicated a bankrupt or insolvent, or applies for or consents to the appointment of a receiver for its property, the other party may terminate this Agreement by written notice. Such termination shall not relieve either party from any obligations accrued hereunder up to the date of receipt of notice of termination.

No waiver by either party of any default by the other in the performance of or compliance with any provision, condition, or requirement herein shall be deemed to be a waiver of, or in any manner release such other party from compliance with any provision, condition, or requirement in the future; nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter. No banking of funds by Printer shall constitute an accord and satisfaction, regardless of any notations placed on the remittance or in accompanying correspondence.

If either party commences an action against the other party arising out of or in connections with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, as determined by the court.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not affect or impair the continuing enforceability, validity, and legality of any other provision.