

## **Silvertoad Conditions of Contract – Print Services**

**1. Definitions** (a) "Silvertoad" means the party providing the goods or services under these terms and conditions. (b) "Customer" means the party contracting with Silvertoad to acquire the goods or services supplied under these terms and conditions. (c) "Work" means all goods (by way of intermediate or finished product) and services supplied by Silvertoad to the Customer. (d) "Intermediates" means all products produced during the manufacturing process including non-exhaustively disks, film, plate, intellectual property. (e) "Preliminary Work" means all work done in the concept and preparatory stages. (f) "Electronic File" means any text, illustration or other matter supplied or produced by either Party in digitised form on any communication link, platform, media or service. (g) "Periodical Publications" means publications produced at (normally regular) intervals. (h) "Insolvency" means the Customer is in a position where it is unable to pay its debts or has a winding up petition issued against it or has a receiver, administrator or administrative receiver appointed to it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him. (i) "Writing" means and includes email, facsimile transmission and comparable means of communication. (j) "Estimate" means a formal estimate for Work issued by a duly authorised person on behalf of the Company.

**2. Payment** (a) Estimates are based on Silvertoad's current costs of production and, unless otherwise agreed in writing, are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs. (b) Any additional work required of Silvertoad by reason of the Customer supplying inadequate copy, incomplete or incorrect instructions or insufficient materials, or late delivery of the same shall be charged. (c) Payment shall become due before delivery of the Work. Silvertoad, at its absolute discretion, may ask for part or full payment in advance of starting the Work. (d) If credit facilities have been granted, payment is due within 30 days of the date of invoice. (e) If any item(s) remain unpaid by that due date charges will apply, in accordance with s5A and/or s6 of the Late Payment Commercial Debt (Interest) Act 1998 or any subsequent enactment and Silvertoad will charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above HSBC Bank base rate from time to time until payment is made in full (a part of a month being treated as a full month for the purposes of calculating interest. In addition, all invoices will become due and payable immediately and will be treated as overdue items, with appropriate charges applied and all costs reasonably incurred in collecting the debt payable by the Customer. (f) Unless otherwise agreed in writing, the price for the Work will be "ex-works" and delivery shall be charged extra. (g) Should the Work be suspended or delayed by the Customer for any reason Silvertoad shall be entitled to immediate payment for work already carried out, materials specially ordered and any other additional costs.

**3. Credit Facilities** Credit facilities may be granted to applicants who complete Silvertoad's Credit Account Application Form and who satisfy Silvertoad's criteria as set out from time to time. Where facilities are granted Silvertoad reserves the right to withdraw them at any time, without having to give its reasons and, in such a case, all outstanding invoices become due and payable immediately and Silvertoad shall be entitled to cancel the contract or suspend any further deliveries to the Customer.

**4. Tax** Estimates are given exclusive of tax and Silvertoad reserves the right to charge and the Customer will pay any VAT or other tax payable at the prevailing rates.

**5. Orders** (a) No order which has been accepted by the company may be cancelled by the Customer except with the agreement in writing of Silvertoad and on terms that the Customer shall indemnify Silvertoad against full loss (including loss of profit), costs, damages, charges and expenses incurred by Silvertoad as a result of cancellation. (b) Any request to the company for the provision of Work whether oral or in Writing made by any representative of the Customer shall upon the Company's acceptance, whether express or implied, constitute an order to the company. Unless expressly instructed in Writing to the contrary by the Customer, the Company is authorised to accept any instructions during the course of the Work from any representative of the Customer whether or not such instructions are given at the request and with the authority of the Customer. All instructions received by the Company for the provision of and during the course of the Work shall be binding



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on the Customer who will be responsible to the Company to pay for such work. (c) The Customers acceptance of an Estimate shall confirm its acceptance to these conditions. These conditions apply to all Work done by the Company and override any other terms or conditions contained or referred to in the Customers order, in correspondence or elsewhere or implied by trade, custom, practice or course of dealing unless such other terms have been specifically agreed to by a Director of the Company. Any provisions to the contrary in any document produced by the Customer are hereby excluded or extinguished.

**6. Preliminary Work** All work carried out, whether experimentally or otherwise, at the Customer's request, shall be charged.

**7. Electronic Files** (a) It is the Customer's responsibility to maintain a copy of any original electronic file provided by the Customer. (b) Silvertoad shall not be responsible for checking the accuracy of supplied input from an electronic file unless otherwise agreed in writing. (c) Without prejudice to clause 16, if an electronic file is not suitable for output on equipment normally adequate for such purposes without adjustment or other corrective action, Silvertoad may make a charge for any resulting additional costs incurred or may reject the file without prejudice to its rights to payment for work done/material purchased.

**8. Print Quality and Proofs** Proofs of all work may be submitted for the Customer's approval and Silvertoad shall incur no liability for any errors not corrected by the Customer in proofs so submitted. The Customer acknowledges that, in the case of digital proofs, the clarity of the image may vary between output devices. Customer's alterations and additional proofs necessitated thereby shall be charged extra and Silvertoad shall not be liable for any losses arising of whatever nature in respect of any delay that may be caused to its subsequent obligations under the contract as a result of this. When style, type or layout is left to Silvertoad's judgement, changes therefrom made by the Customer shall be charged extra. Where the Customer waives the right to production of proofs by Silvertoad prior to print, Silvertoad will not be liable for any direct, indirect consequential loss or damage (whether by loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever or howsoever arising in the event that the products produced are considered unsatisfactory for use by the Customer. Due to differences in equipment, paper, inks and other conditions between colour proofing and production runs, a reasonable variation in colour between colour proofs and the completed job will be deemed acceptable unless otherwise agreed in writing.

**9. Variations in Quantity** Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5 per cent being allowed for overs or shortage, the same to be charged or deducted, unless otherwise agreed in writing.

**10. Delivery** (a) Delivery of Work shall be accepted when tendered. (b) Unless otherwise agreed in writing completion and delivery times are a guide only and, whilst Silvertoad will make every effort to adhere to proposed timescales, time is not of the essence in any contract with the Customer. (c) Unless otherwise agreed in writing, (in which case an extra charge may be made) delivery will be to kerbside at the Customer's address and the Customer will make arrangements for off-loading and for any additional transportation to its storage facility. (d) Subject to any agreement as per 10(c) above, delivery involving difficult access and/or unreasonable distance from vehicular access shall entitle Silvertoad to make an extra charge to reflect its extra costs. (e) Should expedited delivery be agreed an extra charge may be added to cover any overtime or any other additional costs involved. (f) Should work be suspended at the request of or delayed through default of the Customer for a period of 30 calendar days Silvertoad shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.

**11. Finished Goods and Retention of Title** (a) The risk in all goods delivered in connection with the work shall pass to the Customer on delivery and the Customer should insure accordingly. (b) On completion of the Work, Silvertoad will store the Customer's materials and Work for a maximum of one month, after which time they



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will be destroyed without further notice. (c) The Work remains Silvertoad's property until the Customer has paid for it and discharged all other debts owing to Silvertoad. (d) If the Customer becomes subject to insolvency and the Work has not been paid for in full Silvertoad may take the goods back and, if necessary, enter the Customer's premises to do so, or to inspect and/or label the goods so as to identify them clearly. (e) If the Customer sells the goods before they have been paid for in full he shall hold the proceeds of sale on trust for Silvertoad in a separate account until any sum owing to Silvertoad has been discharged from such proceeds. (f) Where the Customer is in breach of these Terms or performs any act of Bankruptcy or Insolvency Silvertoad reserves the right to approach the Customer's client and to offer the Work directly to them, notwithstanding the fact that this will involve advising the Customer's client that the Customer is in breach or in default.

**12. Claims** (a) Advice of damage, delay or loss of goods in transit or of non-delivery must be given in writing to Silvertoad and the carrier within 3 clear days of delivery (or, in the case of non-delivery, within 28 days of notification of despatch of the goods) and any claim in respect thereof must be made in writing to Silvertoad and carrier within 7 clear days of delivery (or, in the case of non-delivery, within 42 days of notification of despatch). All other claims must be made in writing to Silvertoad within 28 days of delivery. Silvertoad shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Customer proves that (i) it was not possible to comply with the requirements and (ii) the claim was made as soon as reasonably possible. (b) If the Work is defective so that the Customer may in law reject it, said rejection must take place within 7 days of delivery of the goods, failing which the Customer will be deemed to have accepted the Work. (c) In the event of all or any claims or rejections Silvertoad reserves the right to inspect the Work within 7 days of the claim or rejection being notified.

**13. Liability** (a) Silvertoad shall not be liable for indirect loss, consequential loss or third party claims occasioned by delay in completing the Work or for any loss to the Customer arising from delay in transit, whether as a result of Silvertoad's negligence or otherwise. (b) Insofar as is permitted by law where work is defective for any reason, including negligence, Silvertoad's liability (if any) shall be limited to rectifying such defect, or crediting its value against any invoice raised in respect of the Work. (c) Where Silvertoad performs its obligations to rectify defective work under this condition it shall not be liable for indirect loss, consequential loss or third party claims occasioned by defective Work and the Customer shall not be entitled to any further claim in respect of the Work done nor shall the Customer be entitled to repudiate the contract, refuse to pay for the work or cancel further deliveries. (d) Defective Work must be returned to Silvertoad before replacement or credits can be issued. If the subject Work is not available to Silvertoad then Silvertoad will hold that the Customer has accepted the Work and no credits or replacement Work will be provided. (e) Where Silvertoad offers to replace defective Work the Customer must accept such an offer unless he can show clear cause for refusing to do so. If the Customer opts to have the work re-done by any third party without reference to Silvertoad the Customer automatically revokes his right to any remedy from Silvertoad, including but not exclusively the right to a credit in respect of Work done by Silvertoad. (f) Where the Work will be forwarded by or on behalf of the Customer to a third party for further processing the Customer will be deemed to have inspected and approved the Work prior to forwarding and Silvertoad accepts no liability for claims arising subsequent to the third party's processing. (g) Silvertoad reserves the right to reject any work forwarded to it after initial processing by a third party as soon as it is reasonably practicable without processing the work any further. Should the Customer require Silvertoad notwithstanding to continue, then Silvertoad is only obliged to do so after confirmation from the Customer in writing. (h) Nothing in these conditions shall exclude Silvertoad's liability for death or personal injury as a result of its negligence.

**14. Standing Material** (a) Metal, film and other materials owned by Silvertoad and used by it in the production of type, plates, film-setting, negatives, positives and the like shall remain its exclusive property. Such items when supplied by the Customer shall remain the Customer's property. (b) Lithographic film and plates, tapes, disks or other work may be effaced immediately after the order is executed unless written arrangements are



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made to the contrary. In the latter event, rent may be charged. (c) Silvertoad shall not be required to download any digital data from its equipment or supply the same to the Customer on disk, tape or by any communication link unless written arrangements are made to the contrary.

**15. Customer's Property** (a) Customer's property and all property supplied to Silvertoad by or on behalf of the Customer shall, while it is in the possession of Silvertoad or in transit to or from the Customer, be deemed to be at Customer's risk unless otherwise agreed and the Customer should insure accordingly. (b) Silvertoad shall be entitled to make a reasonable charge for the storage of any Customer's property left with Silvertoad before receipt of the order or after notification to the Customer of completion of the work.

**16. Materials supplied by the customer** (a) Silvertoad may reject any disks, electronic files, paper, plates or other materials supplied or specified by the Customer which appear to it to be unsuitable. Additional cost incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by Silvertoad in ascertaining the unsuitability of the materials then that amount shall not be charged to the Customer. (b) Without prejudice to clause 16(a) where materials are so supplied or specified, Silvertoad will use reasonable endeavours to secure the best results, but shall have no liability for the quality of the end-products. (c) Quantities of materials supplied shall be adequate to cover normal spoilage. Any costs incurred as a result of shortages, including re-starting jobs, duplicating masters etc will be charged in addition to the estimated price.

**17. Insolvency** Without prejudice to other remedies, if the Customer becomes insolvent (namely being a company is deemed unable to pay its debts or has a winding up petition issued against it or has a receiver, administrator or administrative receiver appointed to it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him) Silvertoad shall have the right not to proceed further with the contract or any other work for the Customer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Customer, such charge to be an immediate debt due to him. Any unpaid invoices shall become immediately due for payment.

**18. General Lien** Without prejudice to other remedies, in respect of all unpaid debts due from the customer Silvertoad shall have a general lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property as agent for the Customer in such manner and at such a price as deemed fit and to apply the proceeds towards such debts, and shall when accounting to the Customer for any balance remaining be discharged from all liability in respect of such goods or property.

**19. Illegal Matter** (a) Silvertoad shall not be required to print any matter which in its opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party. (b) The Customer warrants that the matter to be printed does not contain any such material. (c) Silvertoad shall be indemnified by the customer in respect of any claims, costs and expenses arising out of any libellous or illegal matter or any infringement of copyright, patent, design or of any other proprietary or personal rights contained in any material printed for the Customer. The indemnity shall include (without limitation) any amounts paid on a lawyer's advice in settlement of any claim that any matter is libellous or illegal or any said infringement.

**20. Periodical Publications** In the case of a periodical publication, subject to the first issue being successfully printed, a contract will be deemed to exist and may not be terminated by either party unless 13 weeks notice in writing is given in the case of periodicals produced monthly or more frequently or 26 weeks notice in writing is given in the case of other periodicals. Notice may be given at any time but wherever possible should be given after completion of work on any one issue. Nevertheless Silvertoad may terminate any such contract forthwith should any sum thereunder remain unpaid.



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**21. Force Majeure** Silvertoad shall be under no liability if it shall be unable to carry out any provision of the contract for any reason beyond its reasonable control including (without limiting the foregoing): Act of God; legislation; war; fire; flood; drought; inadequacy or unsuitability of any instructions, electronic file or other data or materials supplied by the Customer; failure of power supply; lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute; or owing to any liability to procure materials required for the performance of the contract. During the continuance of such a contingency the Customer may by written notice to Silvertoad elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

**22. Data Protection** The Customer is hereby notified that Silvertoad may transfer personal information about the Customer to a Credit Agency pursuant to clause 2(d) above.

**23. Law** These conditions and all other express and implied terms of the contract shall be governed and construed in accordance with the laws of England and the parties agree to submit to the jurisdiction of the courts of England and Wales.

**24. Notices** All specifications and notices relied on by either party and all variations to this agreement must be in writing and include a duly authorized signature.

**25. Consumers** Nothing in these Terms shall affect the rights of Consumers.

**26. Severability** All clauses and sub-clauses of this Agreement are severable and if any clause or identifiable part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability shall not affect the enforceability of the remaining provisions or identifiable parts thereof in these Terms and Conditions.



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