



WETHERBY SHADE CARD COMPANY LIMITED

TERMS & CONDITIONS OF BUSINESS

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

"Approval of Production Copy"	written approval from the Customer of the first of the Goods to be run-off WSCCL's production machines.
"Business Day"	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
"Commencement Date"	has the meaning set out in clause 2.2.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 14.7.
"Confirmation of Order"	the written acceptance of the Order issued by WSCCL to the Customer.
"Contract"	the contract between WSCCL and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
"Customer"	the person or firm who purchases the Goods and/or Services from WSCCL.
"Delivery Location"	has the meaning set out in clause 4.3.
"Force Majeure Event"	has the meaning given to it in clause 13.1.
"Goods"	the goods (or any part of them) set out in the Order.
"Goods Specification"	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and WSCCL.
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of

	protection which subsist or will subsist now or in the future in any part of the world.
"Order" Services.	the Customer's order for the supply of Goods and/or
"Services"	the services supplied by WSCCL to the Customer as set out in the Service Specification.
"Service Specification"	the description or specification for the Services provided in writing by WSCCL to the Customer.
"WSCCL"	Wetherby Shade Card Company Limited registered in England and Wales with company number 00632398.

1.2 Construction. In these Conditions, the following rules apply:

- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall be placed in the following manner:
 - 2.2.1 the Customer shall contact WSCCL with a request for a quotation, setting out its requirements for Goods and/or Services. WSCCL may at its absolute discretion arrange a meeting with the Customer to discuss the quotation and obtain any necessary further information from the Customer;
 - 2.2.2 WSCCL shall provide the Customer with a quotation, which may at WSCCL's absolute discretion be accompanied by a mock-up of any Goods;
 - 2.2.3 WSCCL and the Customer shall discuss the quotation including any Goods Specification and/or Service Specification; and
 - 2.2.4 based on the quotation, the Customer shall place its Order with WSCCL.
- 2.3 Any quotation given by WSCCL shall not constitute an offer, and is only valid for a period of 90 (ninety) Business Days from its date of issue.

- 2.4 The Order shall only be deemed to be accepted when WSCCL issues the Confirmation of Order or when WSCCL commences work on the Order and/or supply of the Services (whichever is earlier) at which point and on which date the Contract shall come into existence ("Commencement Date").
- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of WSCCL which is not set out in the Contract.
- 2.6 Any general samples, drawings, descriptive matter or advertising issued by WSCCL and any general descriptions of goods or illustrations or descriptions of services contained in WSCCL's catalogues or website are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services. They shall not form part of the Contract or have any contractual force.
- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.1 The Goods are described in the Goods Specification.
- 3.2 WSCCL reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

- 4.1 Notwithstanding the other provisions of these Conditions, WSCCL shall not deliver the Goods until it has received the Approval of Production Copy from the Customer.
- 4.2 WSCCL shall use reasonable endeavours to ensure that each delivery of the Goods is accompanied by a delivery note which shows WSCCL job numbers and the type and quantity of the Goods.
- 4.3 WSCCL shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location").
- 4.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. WSCCL shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide WSCCL with adequate delivery instructions or any other information, instructions or materials that are relevant to the supply of the Goods including but not limited to any of the Customer's artwork, print or Customer supplied product.
- 4.6 If WSCCL fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. WSCCL shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide

WSCCL with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 4.7 The Customer shall not be entitled to reject the Goods if WSCCL delivers up to and including 10% (ten per cent) more or less than the quantity of Goods ordered (unless otherwise agreed by WSCCL in writing) and a pro-rata adjustment shall be made to the Order invoice accordingly.
- 4.8 WSCCL may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1 WSCCL warrants that on delivery the Goods shall:
 - 5.1.1 conform in all material respects with the Goods Specification; and
 - 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
 - 5.2.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 WSCCL is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by WSCCL) returns such Goods to WSCCL's place of business at the WSCCL's cost, WSCCL shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 WSCCL shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
 - 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow WSCCL's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice;
 - 5.3.3 the defect arises as a result of WSCCL following any drawing, design or Goods Specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of WSCCL;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
 - 5.3.7 any materials supplied by the Customer in respect of the Order:
 - 5.3.7.1 are faulty; or

- 5.3.7.2 require special care and the Customer did not notify WSCCL in advance of such special care; or
- 5.3.8 the Goods are damaged in transit but the Customer has accepted the Goods either by signing for them or otherwise in writing.
- 5.4 Except as provided in this clause 5, WSCCL shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by WSCCL under clause 5.2.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until WSCCL has received payment in full (in cash or cleared funds) for:
 - 6.2.1 the Goods; and
 - 6.2.2 any other goods and/or services that WSCCL has supplied to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 hold the Goods on a fiduciary basis as WSCCL's bailee;
 - 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as WSCCL's property;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on WSCCL's behalf from the date of delivery;
 - 6.3.5 notify WSCCL immediately if it becomes subject to any of the events listed in clause 12.1; and
 - 6.3.6 give WSCCL such information relating to the Goods as WSCCL may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1, or WSCCL reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy WSCCL may have, WSCCL may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.5 All Intellectual Property Rights created by WSCCL in respect of the Order including but not limited to all artwork, magazines and templates shall be owned by WSCCL. WSCCL licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Goods.

7. SUPPLY OF SERVICES

- 7.1 WSCCL shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 WSCCL shall use all reasonable endeavours to meet any performance dates for the Services specified in Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 WSCCL shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and WSCCL shall notify the Customer in any such event.
- 7.4 WSCCL warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order, the Goods Specification and/or the Service Specification are complete and accurate;
 - 8.1.2 co-operate with WSCCL in all matters relating to the Goods and/or the Services including but not limited to approval of artwork in a timely manner; and
 - 8.1.3 provide WSCCL with such information and materials as WSCCL may reasonably require to supply the Goods and/or the Services, and ensure that such information is accurate in all material respects.
- 8.2 The Customer shall indemnify WSCCL against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by WSCCL in connection with any claim made against WSCCL for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with WSCCL's use of the Goods Specification and/or the Services Specification. This clause 8.2 shall survive termination of the Contract.
- 8.3 If WSCCL's performance of any of its obligations in respect of the Goods and/or the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
 - 8.3.1 WSCCL shall without limiting its other rights or remedies have the right to suspend delivery of the Goods and/or performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays WSCCL's performance of any of its obligations;
 - 8.3.2 WSCCL shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from WSCCL's failure or delay to perform any of its obligations as set out in this clause 8.2; and

8.3.3 the Customer shall reimburse WSCCL on written demand for any costs or losses sustained or incurred by WSCCL arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

- 9.1 The price for the Goods and/or the Services shall be the price specified in the Confirmation of Order ("Price").
- 9.2 WSCCL reserves the right to increase the Price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to WSCCL that is due to:
- 9.2.1 any factor beyond the control of WSCCL (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 9.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give WSCCL adequate or accurate information or instructions in respect of the Goods.
- 9.3 WSCCL reserves the right to increase the Price of the Services, by giving notice to the Customer at any time, due to any request by the Customer to change the Service Specification.
- 9.4 WSCCL shall invoice the Customer on or at any time after completion of delivery of the Goods and/or supply of the Services.
- 9.5 The Customer shall pay each invoice submitted by WSCCL:
- 9.5.1 30 days from date of invoice; and
- 9.5.2 in full and in cleared funds to a bank account nominated in writing by WSCCL, and time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by WSCCL to the Customer, the Customer shall, on receipt of a valid VAT invoice from WSCCL, pay to WSCCL such additional amounts in respect of VAT as are chargeable on the supply of the Goods or the Services at the same time as payment is due for the supply of the Goods or the Services.
- 9.7 If the Customer fails to make any payment due to WSCCL under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% (four per cent) per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. WSCCL may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by WSCCL to the Customer.

10. CONFIDENTIALITY

A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude WSCCL's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

11.1.2 fraud or fraudulent misrepresentation;

11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

11.1.5 defective products under the Consumer Protection Act 1987.

11.2 Subject to clause 11.1:

11.2.1 WSCCL shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

11.2.2 WSCCL's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price.

11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 12.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 (ten) Business Days after receipt of notice in writing to do so;
 - 12.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
 - 12.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 12.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company);
 - 12.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order; or
 - 12.1.6 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 12.2 Without limiting its other rights or remedies, WSCCL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting its other rights or remedies, WSCCL may suspend all further deliveries of Goods or the supply of Services under the Contract or any other contract between the Customer and WSCCL if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1, or WSCCL reasonably believes that the Customer is about to become subject to any of them.
- 12.4 On termination of the Contract for any reason:
- 12.4.1 the Customer shall immediately pay to WSCCL all of WSCCL's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, WSCCL shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 12.4.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 12.4.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. FORCE MAJEURE

- 13.1 For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of WSCCL including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of WSCCL or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- 13.2 WSCCL shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3 If the Force Majeure Event prevents WSCCL from providing any of the Goods and/or Services for more than 4 (four) weeks, WSCCL shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14. GENERAL

- 14.1 Assignment and other dealings.
- 14.1.1 WSCCL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 14.1.2 The Customer shall not, without the prior written consent of WSCCL, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 Notices.
- 14.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- 14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 14.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.4 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 14.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.6 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.7 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by WSCCL.
- 14.8 Governing law. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 14.9 Jurisdiction. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).