

CENTURY ART LIMITED
TERMS AND CONDITIONS

The Customer's attention is in particular drawn to the provisions of conditions 10.4 and 11.

1 Interpretation

1.1 In these conditions, unless the context otherwise requires the following words have the following meanings:

- “Century” Century Art Limited, company number 03613709 whose registered office is at Unit 10, The Booths Industrial Estate, Awworth Road, Ilkeston, Derbyshire DE7 8AX;
- “Contract” any contract between Century and the Customer for the sale and purchase of the Goods or Services, or both, incorporating these conditions;
- “Customer” the person, firm, company or organisation who purchases the Goods or Services, or both, from Century;
- “Goods” any goods agreed in the Contract to be supplied to the Customer by Century (including any part or parts of them); and
- “Services” any services agreed in the Contract to be supplied to the Customer by Century (including any part of them).

2 Application of terms

- 2.1 Subject to any variation under condition 2.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 These conditions apply to all Century's sales of Goods or Services, or both, and any variation to these conditions and any representations about the Goods or Services, or both, shall have no effect unless expressly agreed in writing and signed by an authorised representative of Century. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Century that is not set out in the Contract. Nothing in this condition shall exclude or limit Century's liability for fraudulent misrepresentation.
- 2.3 Each order or acceptance of a quotation for Goods or Services, or both, by the Customer from Century shall be deemed to be an offer by the Customer to buy Goods or Services, or both, subject to these conditions.
- 2.4 No order placed by the Customer shall be deemed to be accepted by Century until a written acknowledgement of order is issued by Century or (if earlier) Century delivers the Goods or commences the provision of the Services to the Customer.
- 2.5 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.6 Any quotation is given on the basis that no contract shall come into existence until Century despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date (unless otherwise agreed by Century in writing), provided that Century has not previously withdrawn it.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation issued by Century shall be subject to correction without any liability on the part of Century.

3 Description

- 3.1 The quantity and description of the Goods or Services, or both, shall be as set out in Century's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Century and any descriptions or illustrations contained in Century's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services, or both, described in them. They shall not form part of the Contract and this is not a sale by sample.

4 Delivery

- 4.1 Unless otherwise agreed in writing by Century, delivery of the Goods shall take place at Century's place of business.

- 4.2 The Customer shall take delivery of the Goods within 4 days of Century giving it notice that the Goods are ready for delivery. Where a place of delivery other than Century's place of business has been agreed, the Customer shall take delivery of the Goods on their arrival.
- 4.3 Any dates specified by Century for delivery of the Goods, or supply of the Services, are intended to be an estimate only and time for delivery of the Goods, or supply of the Services, shall not be made of the essence by notice. If no dates are so specified, delivery of the Goods, or supply of the Services, shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions Century shall not be liable for any direct, indirect or consequential loss (all three terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, or supply of the Services, (even if caused by Century's negligence) nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Customer fails to accept delivery of any of the Goods within 4 days of being notified that they are ready for delivery, or if Century is ready to deliver the Goods but is unable to do so within 4 days of notifying the Customer that the Goods are ready because the Customer has not provided appropriate facilities, instructions, documents, licences or authorisations:
- 4.5.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by Century's negligence);
- 4.5.2 the Goods shall be deemed to have been delivered; and
- 4.5.3 Century may store the Goods until delivery, and may invoice the Customer for all related costs and expenses (including, without limitation, for storage and insurance), at reasonable intervals throughout any such period of storage.
- 4.6 If for any reason the Customer fails to accept delivery of any of the Goods within 14 days of being notified that they are ready for delivery, or if Century is ready to deliver the Goods but is unable to do so within 14 days of notifying the Customer that the Goods are ready because the Customer has not provided appropriate facilities, instructions, documents, licences or authorisations, Century shall be entitled to dispose of the Goods as it sees fit without prejudice to its right to receive payment in respect of such Goods, subject only to Century being required to offset (where, in Century's opinion, it is reasonable to do so) any recovery it makes in respect of such disposal against the liability of the Customer to Century (though such offset shall not be applied to the extent that it results in any payment being made to the Customer).
- 4.7 The Customer shall provide, at the place where delivery of the Goods is to take place, and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.8 If Century delivers to the Customer a quantity of Goods of up to 10 percent more or less than the quantity stated in the Contract then: (a) the Customer shall not be entitled to object to or reject the Goods, or any of them, by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate; and (b) Century shall be deemed to have fulfilled its obligation to deliver the Goods in the quantity stated in the Contract.
- 4.9 Century may deliver the Goods, or supply the Services, by separate instalments. Each separate instalment shall be notified, invoiced and paid for in accordance with the provisions of the Contract.
- 4.10 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

5 Non-delivery

- 5.1 The quantity of any consignment of Goods as recorded by Century upon despatch from Century's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 Century shall not be liable for any non-delivery of Goods, or failure to supply the Services, (even if caused by Century's negligence) unless the Customer gives written notice to Century of the non-delivery or failure within 7 days of the date when the Goods would in the ordinary course of events have been received or the Services were to be supplied.
- 5.3 Any liability of Century for non-delivery of the Goods, or failure to supply the Services, shall be limited to:
- 5.3.1 supplying the Goods or Services within a reasonable time; or

5.3.2 issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or Services.

6 Risk/title

6.1 Risk in the Goods passes to the Customer on delivery of the Goods.

6.2 Ownership of the Goods shall not pass to the Customer until Century has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to Century from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as Century's bailee;

6.3.2 store the Goods (at no cost to Century) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Century's property;

6.3.3 not destroy, 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 on Century's behalf for their full price against all risks to the reasonable satisfaction of Century. On request the Customer shall produce the policy of insurance to Century; and

6.3.5 notify Century immediately should any of the circumstances listed in clause 6.5 arise or are likely to arise.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

6.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

6.4.2 any such sale shall be a sale of Century's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

6.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer;

6.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Century and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

6.5.3 the Customer encumbers or in any way charges any of the Goods.

6.6 Century shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Century.

6.7 The Customer grants Century, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

6.8 Where Century is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by Century to the Customer in the order in which they were invoiced to the Customer.

6.9 On termination of the Contract, howsoever caused, Century's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

7 Price

7.1 Unless otherwise agreed by Century in writing, the price for the Goods or Services, or both, shall be the price set out in Century's price list published on (as appropriate) the date of delivery, date of deemed delivery or date of supply.

7.2 Century reserves the right, by giving notice to the Customer at any time before delivery or supply, to increase the price of the Goods or Services, or both, to reflect:

7.2.1 any increase in the cost to Century which is due to any factor beyond its control (such as without limitation, alteration of duties, significant increases in the costs of labour, materials or other costs of manufacture);

7.2.2 any changes in delivery dates, quantities or the specifications for the Goods or Services, or both, which is requested by the Customer; and

7.2.3 any delay caused by any of the Customer's instructions or its failure to give Century adequate information or instructions.

7.3 The price for the Goods or Services, or both, shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance.

8 Payment

8.1 Century will invoice the Customer:

8.1.1 in respect of any Goods ordered, or part thereof, once the Customer has been notified that the Goods, or that part thereof, are ready for delivery in accordance with clause 4; and

8.1.2 in respect of any Services ordered, or part thereof, once such Services or part thereof have been supplied; provided that

8.1.3 in respect of any Goods or Services the provision of which will require material outlay on Century's part in terms of bespokeing, tailoring, incorporation of client material or design, Century may, at its option, invoice the Customer on acceptance of the order and delay beginning work until payment under such invoice (or such proportion of payment as Century requires) is received in cleared funds by Century.

8.2 Subject to condition 8.4, the Customer shall make payment of the price for the Goods or Services, or both, in cleared funds within 30 days of the date of Century's invoice. Time for payment shall be of the essence.

8.3 All payments payable to Century under the Contract shall become due immediately on its termination despite any other provision.

8.4 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Century to the Customer.

8.5 If the Customer fails to pay Century any sum due pursuant to the Contract, the Customer shall be liable to pay interest to Century on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of National Westminster Bank Plc, accruing on a daily basis until payment is made (in cleared funds), whether before or after any judgment.

9 Quality

9.1 Where Century is not the manufacturer of the Goods, Century shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Century.

9.2 Century warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall:

9.2.1 be of satisfactory quality and within the standards set by the Packaging and Films Association (PAFA); and

- 9.2.2 be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to Century in writing and Century has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of Century.
- 9.3 Century warrants that (subject to the other provisions of these conditions) the Services shall be conducted with reasonable care and skill.
- 9.4 Century shall not be liable for a breach of the warranty in condition 9.2 unless the tolerance of the Goods is outside the parameters set by PAFA at the time of manufacture of the Goods.
- 9.5 Century shall not be liable for a breach of any of the warranties in conditions 9.2 and 9.3 unless:
- 9.5.1 the Customer gives written notice of the breach to Century within 7 days of the time when the Customer discovers or ought to have discovered the breach; and
- 9.5.2 Century is given a reasonable opportunity after receiving the notice:
- 9.5.2.1 of examining the defective or faulty Goods; or
- 9.5.2.2 of conducting an enquiry into the deficient provision of the Services.
- 9.6 Century shall not be liable for a breach of any of the warranties in conditions 9.2 and 9.3 if:
- 9.6.1 the Customer makes any further use of such defective or faulty Goods after giving such notice;
- 9.6.2 the breach arises because the Customer failed to follow Century's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice; or
- 9.6.3 the Customer alters or repairs such Goods without the written consent of Century.
- 9.7 Subject to conditions 9.4, 9.5 and 9.6, if the Goods or Services, or both, do not conform with any of the warranties in conditions 9.2 or 9.3 Century shall at its option: (a) repair or replace such Goods (or the defective part); (b) re-supply the Services (or the defective part); or (c) refund the price of such Goods or Services, or both, at the pro rata Contract rate; provided that, if Century so requests, the Customer shall, at Century's expense, return the Goods (or the part of such Goods which is defective) to Century.
- 9.8 If Century complies with condition 9.7 it shall have no further liability for a breach of any of the warranties in conditions 9.2 or 9.3 in respect of such Goods or Services, or both.
- 9.9 Any Goods replaced shall belong to Century.
- 10 Limitation of liability
- 10.1 Subject to conditions 4, 5 and 9, the following provisions set out the entire financial liability of Century (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 10.1.1 any breach of these conditions;
- 10.1.2 any use made of the Goods or Services, or both, or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- 10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 Except as expressly provided in these conditions all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of Century:
- 10.3.1 for death or personal injury caused by Century's negligence;
- 10.3.2 under section 2(3), Consumer Protection Act 1987;
- 10.3.3 under section 12 of the Sale of Goods Act 1979;
- 10.3.4 for any matter which it would be illegal for Century to exclude or attempt to exclude its liability; or
- 10.3.5 for fraud or fraudulent misrepresentation.
- 10.4 Subject to conditions 10.2 and 10.3:

- 10.4.1 Century's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be for direct losses only and limited to the higher of: (a) the Contract price; or (b) the sums actually received by Century following a successful claim under a relevant insurance policy in respect of the event giving rise to the claim; and
- 10.4.2 Century shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract or its performance.

11 Indemnity

- 11.1 The Customer shall indemnify, and keep indemnified, Century on demand from and against all loss, damage, cost, expense (including legal fees) or liability suffered or incurred by Century resulting from the Century's use of any artwork or other material provided by the Customer.

12 General

- 12.1 Century may assign the Contract or any part of it to any person, firm, company or organisation.
- 12.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Century.
- 12.3 Century reserves the right to defer the date of delivery or supply, or to cancel the Contract, (without liability to the Customer) if it is prevented from or delayed from performing its duties under the Contract due to circumstances beyond the reasonable control of Century, including (but not limited to) strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors..
- 12.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.