

# STANDARD TERMS AND CONDITIONS (Update 2013)

Issued by Bombay Master Printers' Association

Unless otherwise agreed in writing or modified, the following terms and conditions shall regulate commercial business relationship between the Member and the Buyer as defined below. These terms and conditions supersede any previous agreements or understanding between the Parties and may be varied only in writing by the Parties.

## 1. DEFINITIONS:

- (a) "Buyer" means whoever buys any goods or receives any services from a Member for a consideration.
- (b) "Member" means Member of the Bombay Master Printers' Association.
- (c) "Party" or "Parties" means Member or Buyer, individually or collectively, as the context so requires.

2. **PRINTING QUOTES:** Quotations from Members are valid for 15 / 30 days from the date of submission and are subject to availability of material. A quotation not accepted in writing within the said 15 days may be changed by the Member.

3. **ORDERS:** Orders placed by Buyers shall be in writing or through email and once placed cannot be cancelled. Any additional order or any alteration to the order already placed shall be communicated to the Member in writing at least 15 days in advance of delivery. Any such additional order/alterations to the order shall be charged extra at the Member's current rates as per fresh quotes..

4. **ACCEPTANCE:** Acceptance of order, additional order and/or alterations to the order shall not be effective against the Member unless accepted by Member and intimation thereof to the Buyer. Printed conditions contained in Buyer's order forms, on Buyer's letterheads or any such document issued by the Buyer, will not be binding on the Member unless specifically accepted by the Member in writing or through email separately. Any deviation from these terms and conditions shall be highlighted by the Buyer to the Member.

5. **TAXES:** All taxes, levies and octroi, LBT if any, levied by the Central and/or State Governments, Municipalities and/or Public Bodies even if not included in the quotation, will be charged extra, as and where applicable, and even if not charged, in any event, shall be payable by the Buyer.

6. **SKETCHES, DUMMIES & ARTWORK:** Sketches, dummies and artwork prepared by or submitted by the Member in confidence shall remain the property of the Member, unless the Parties have agreed otherwise and the Buyer has paid suitable consideration for the same as determined by the Member. No use of such sketches, dummies and artwork shall be made, or any idea obtained therefrom be used, without the express consent in writing of the Member.

7. **PROCESS MATERIALS:** All photographic films, plates and materials, floppies, CD/DVDs transfer screens, cylinders, or other printing media, used in the process of printing, unless paid for separately, shall remain the property of the Member. The Member shall have a lien on all such items in the event of non-payment.

8. **PROOFS:** (a) Proofs up to a maximum of three copies Only one copy of the proof (for book work / Annual reports etc upto a maximum of two copies one copy of the print and the rest by soft versions like PDFs or JPGs ) will be submitted for the Buyer's review and approval. (b) Proofs, with or without any corrections, must be returned to the Member marked 'O.K.' or 'Revised Proof' and must be signed by the Buyer. Until the proofs are returned, no additional work will be performed. No responsibility will be accepted for any errors left out in the proofs passed by the Buyer. (c) All corrections, changes, alterations on or after the first proof will be charged extra. (d) There will be an extra charge for machine proofs.

9. **ACCEPTABLE/ACCEPTED DELIVERY:** (a) Because of differences in equipment, paper, inks and other conditions between colour proofing / digital proof and production press-room operations, a reasonable variation between the machine / laser / digital / satin prints colour proofs and the completed order is to be expected. Such variations shall constitute an acceptable delivery as on the date of delivery ("date of acceptance") (b) Any complaint / objection as to the completed order shall be made in writing by the Buyer to the Member within fifteen (15) 7 days from the date of acceptance ("the said period"). (c) No complaint / objection shall be entertained or be considered genuine or bonafide if made to the Member after the expiry of the said period. Upon rectification of the complaints, if any, or the expiry of the said period, as the case may be, the Buyer shall be deemed to have accepted the delivery of the completed order as per the specifications and to his satisfaction ("date of deemed acceptance").

10. **OUTSTATION DELIVERIES:** (a) At the request of the Buyer, the Member may agree to make outstation deliveries of the completed orders and in such cases, loading, freight, octroi, courier C Note or postal receipts shall be accepted as proofs of delivery and the responsibility of the Member ceases the moment the goods are dispatched as per the instructions of the Buyer. (b) The despatch of the goods by the Member at the request of the Buyer, if undertaken, is at the entire risk of the Buyer and for any claim or loss, damage, non-delivery or short delivery, the Member will not be responsible. (c) Insurance in transit is to be borne by the Buyer. Members will not be responsible for damage in transport, though proper care and diligence will be taken before dispatch.

11. **VARIATION IN QUANTITY:** (a) Every endeavour will be made to deliver the correct quantity ordered but quotations are conditional upon a tolerance of 5% of the quantity ordered (in colour work upto 10%) being allowed for over runs or under runs and the same to be charged for or deducted pro rata, as the case may be. (b) All blank pages required to complete an order will be charged at the same rate as that of a printed page.

12. **TERMS OF PAYMENT:** (a) Payment shall become due and the Buyer shall be liable to make the payments immediately on delivery or within 30 days from the date of acceptance or date of deemed acceptance, as the case may be. (b) In the event the Buyer fails to make payment as per Clause (a), the Buyer shall be liable to pay compound interest with monthly rests to the Member on delayed payments and all other amounts outstanding beyond 45 days from the date of acceptance or date of deemed acceptance, as the case may be, at three times of the bank rate notified by the Reserve Bank. Further, the name of the Buyer will be forwarded to the Bombay Master Printers' Association for circulation among its Members as defaulting Buyer. (c) Whenever the work on the orders is suspended at the request of the Buyer or delayed through any default of the Buyer and undue delay for any reason whatsoever occurs, the Buyer would be liable to be charged at the discretion of the Member, the rent and storage costs for the goods, materials and stores detained for the order and/or for payment for part of the order already carried out and/or for payment of such amount on account as the Member may decide and the Buyer shall be bound to make all such rent, charges or payments. (d) Out of pocket expenses will be charged for separately and should be paid in advance along with the print order. In such cases any additional cost of reprocessing or reprinting part thereof or entire printed quantity will be charged to the buyer. Receipts, challans for such out of pocket expenses shall be provided only where available.

13. **OBLIGATIONS OF THE BUYER:** (a) The Buyer shall make payment to the Member within the stipulated time. (b) The Buyer shall be required to furnish the following additional information in his annual statement of accounts, namely:-

- (i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to the Member as at the end of each accounting year;
- (ii) the amount of interest paid by the Buyer specified herein, along with the amounts of the

payment made to the Member beyond the appointed day during each accounting year;

- (iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified herein;

- (iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

- (v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure.

14. **RETENTION COPIES AND IMPRINT:** The Member shall be entitled to retain with himself without any payment therefore to the Buyer 20 copies of all printed work including books and magazines for record or display or any other purpose whatsoever. Copies to be supplied by the Member gratis to government departments, libraries etc. as per legislation or government rules will be deducted from the quantity to be supplied to the Buyers. The Member shall be entitled to put the Member's imprint line on all the completed orders at such places as he may decide.

15. **LIABILITY:** (a) Where there is any apparent defect in the order for any reason, the Member's liability, if any, shall be limited to rectifying such defect. (b) The total monetary liability of the Member for any proved breach or default shall in no event exceed the total invoiced amount less out of pocket expenses and taxes. (c) The Member shall not be liable for any consequential loss or for any loss to the Buyer arising from third party claims.

16. **BUYER'S PROPERTY:** (a) All Buyer's property that is stored with a Member is at the Buyer's risk, and the Member is not liable for any loss damage caused by any reason whatsoever. (b) Where materials equipment are supplied by Buyers, every care will be taken to ensure that the best results are obtained but responsibility will not be accepted for imperfection in the order caused on account of defects in and/or unsuitability of such materials or equipment. (c) Any raw materials supplied by the Buyer must include adequate quantities to cover spoilage. Unless stipulated otherwise, the spoilage will be as per the All India Federation of Master Printers' spoilage formula. (d) Where paper, board or other material is furnished by the Buyer to the Member, it shall be properly packed, free from dirt, fluff, grit, torn sheets, creases, bad splices. Any shortage due to the above reasons or short counting shall be on the Buyer's account. Additional cost consequent upon delays or impaired production on account of the above reason shall be charged to the Buyer. (e) It shall be the Buyer's responsibility to maintain a copy of the original file and the Member shall not be responsible for accidental loss/damage to media supplied.

17. **GENERAL LIEN:** In respect of all payments due from the Buyer, the Member shall have a general lien on all goods and property of the Buyer in the Member's possession and shall be entitled on the expiration of 14 days' notice to the said Buyer to dispose of such goods or property as he thinks fit and to apply the proceeds towards such dues. This shall not however preclude the Member of other remedies in law available to the Member to recover its dues or balance thereof

18. **WARRANTIES:** (a) The Buyer warrants that its print order does not carry any statement, remark, allusion connotation or expression of any nature which shall be construed, interpreted or purported to be directly or indirectly slanderous, libellous, illegal or immoral and opposed to public policy, or inconsistent with public morality or infringement of any copyright, patent, design, trademark or repugnant to any other law in force, and the Member shall in his discretion be always at liberty, even after acceptance of the order, either to refuse to print any order or any part thereof or if already printed or otherwise processed either partly or wholly, complete the balance order or to refuse to deliver any such matter any material, whenever in his opinion, the matter or any part thereof, is not according to the aforesaid assumed expression of assurance from the Buyer. (b) As per Clause (a) above, upon the Member either refusing to print and complete the order having accepted it, or having printed a part of the order and refusing to print the balance or refusing to deliver the matter and materials already printed, the Member shall not be liable to pay and the Buyer shall not be entitled to claim any loss or damage for such refusal on the part of the Member. Provided that notwithstanding any other claim, demand or action that the Member shall be entitled to make against the Buyer for loss, damages or otherwise, the Buyer shall also be liable to pay and the Member shall always be entitled to recover all costs, charges and expenses in respect of processing including printing of the entire order or any part thereof on the basis and in proportion of the cost of the order. (c) It is expressly clarified that the obligation to check that the job contents is not illegal or in contravention of any law is upon the Buyer and not the Member.

19. **INDEMNITY:** The Buyer agrees to indemnify the Member and keep him indemnified for such loss or damages including legal costs or any other consequences which may arise in connection with the work, if at any time, any claim is made, action is brought or demand is raised for damages on account of defamation, obscene, slander, libel etc., arising out of the printing order carried out by the Member, and the Buyer shall be liable to pay the same to the Member as soon as such demand is made irrespective of whether such claim is disputed and/or pending in any court of law.

20. **FORCE MAJEURE:** The orders shall be completed as per time lines specified by the Member. The Member shall however be under no liability for non-completion of the order due to inability to procure labour, materials or supplies as a result of any Act of God, Force Majeure, Strike, Lockout, or other labour disputes, fire, flood, change in legislation or other cause, beyond the Member's control.

21. **DISPUTES:** (a) Parties shall endeavour to resolve all claims, disputes, questions or controversies involving them and arising out of or in connection with these terms and conditions or the execution, interpretation, validity, performance or breach hereof (collectively "Dispute(s)") through amicable negotiation and conciliation. (b) Any and all Disputes that cannot be finally resolved amicably by Parties within 30 (thirty) calendar days of sincere efforts from the date of arising of a Dispute, then the Parties may refer the matter for mediation and conciliation to the panel / committee appointed by Bombay Master Printers' Association. (c) Subject to and after exhausting the above remedy as provided in clauses (a) & (b) hereof, if any matter or dispute remains un-resolved, courts in Mumbai shall be deemed to have exclusive jurisdiction to entertain any such dispute. (d) Parties shall endeavor to enter into a separate arbitration agreement and settle their disputes by way of arbitration under the Arbitration and Conciliation Act, 1996, as modified, when appropriate keeping cost, time and other factors into consideration.

22. In the event Parties have executed separate writings governing their inter se terms and conditions, such writings will complement or overwrite these terms and conditions as the case may be and/or as agreed by the Parties.

23. In the event, the Member is registered under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, ("the Act") then the provisions of the Act shall be applicable in addition to these terms and conditions. In the event of any conflict between the Act and these terms and conditions, the provisions of the Act will prevail.

The Buyer hereby acknowledges that he has read and understood the above terms and conditions and agrees to abide by the same.

(Signature of the Buyer)