

Terms and Conditions of Business



Introduction

Customers are advised in their own best interests to read these Terms and Conditions of Business. Each order or acceptance of supplies will be taken as evidence of agreement to these conditions. These conditions shall be binding on the Company and the Customer in respect of all the Company's sales of the Goods and supersede any prior terms, conditions or agreements relating to them or verbal representations, warranties or undertakings given to the Customer by the Company or on its behalf. The Customer's attention is specifically drawn to the provisions of conditions 2.2 and 5.1(d).

1 DEFINITIONS

1.1 In these T&Cs, unless the context otherwise requires, the words below will have the following meanings:

the Company	Martin-Lavell Limited (registered no. 2654521).
Customer(s)	The firm or company being supplied Goods by the Company pursuant to these T&Cs.
Goods	The goods distributed by the Company to the Customer, which may include the Title(s) and/or any items set out in the Martin-Lavell Office Catering Supplies Pricelist (as updated from time to time).
Group	In relation to a company, it means that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
Material	Loose supplements, media, game cards, cover mounted gifts and other non-news products supplied by, or on behalf of, a Publisher for inclusion in, on or with a Title.
Premises	The Customer's premises where the Goods will be delivered as notified to the Company in the Customer's order.
Publisher(s)	Organisation(s) supplying Title(s) to the Company for distribution to the Customers.
Supplier	Organisation(s) supplying Goods (other than the Title(s) which are supplied by the Publisher(s)) to the Company for distribution to Customers.
T&Cs	The Terms and Conditions of Business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties.
Title(s)	Daily and Sunday newspapers, periodicals, magazines, part-works and one-shots (whether national or regional titles), including in each case any instalment of, or Material included with the same or any part of them.

1.2 The headings in these T&Cs are for convenience only and shall not affect their interpretation. A reference to one gender includes a reference to the other gender and the neuter. Words in the singular include the plural and in the plural include the singular.

1.3 Any reference in these T&Cs to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.4 These T&Cs shall apply to the exclusion of any other terms and conditions which the Customer has sought to or subsequently seeks to impose on the Company. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer.

2 THE COMPANY'S OBLIGATIONS AND PROCEDURES

2.1 Deliveries

The Company provides a delivered service for supplies of the Goods to the Premises. Unless otherwise agreed, the Goods shall be delivered only to the entrance or security of the Premises. An alternative delivery point at the Premises must be agreed in advance with the Company and any procedures and/or equipment (such as passes or keys to lockable delivery units) must be provided to the Company in advance of supplies being made. In such an event, the Company will use reasonable endeavours to deliver the Goods to the alternative delivery point. For the avoidance of doubt:

- The Customer shall be wholly responsible for providing a safe and/or secure delivery point for the delivery of supplies, such location enjoying adequate lighting and protection from the weather and from risk of loss or theft;
- The Company reserves the right to deliver to a different delivery point at the Premises where in its view the existing delivery point is inappropriate, insecure, unsafe and/or which poses a threat to the Company's employees, agents or contractors; and
- The security and risk of the supplied Goods after they have been delivered at the delivery point is the sole responsibility of the Customer who shall remain wholly liable for full payment of any supplies of Goods whether they have been lost, stolen, misplaced or damaged.

2.2 Delivery Times

Any dates and/or times specified by the Company for delivery of the Goods are intended to be an estimate only. Time for delivery shall not be made of the essence by notice or any other means. The Company will use its reasonable endeavours to meet the Customer's requested delivery times provided that such delivery times are reasonable in light of the in-bound delivery to the Company of the Goods from the Publishers or their agents/print centres or any other Supplier (as applicable). Notwithstanding the foregoing, the Company shall not be liable to the Customer whatsoever for any direct, indirect or consequential loss (all three of which terms include, but are not limited to, 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 or failure (in whole or in part) in the delivery of the Goods (even if caused by the Company's, or its agents' negligence, recklessness or wilful misconduct).

2.3 Non-Delivery

- The quantity of the consignment of any Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide evidence proving the contrary. To the extent that the Company substantiates any consignment of Goods pre-delivery, no credits whatsoever shall be issued in favour of the Customer and the Customer's persistent or valuable unproven claims or any claims made in bad faith for non or short-delivery shall constitute an irremediable breach of these T&Cs.
- Subject to condition 2.5, any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing pro-rated credits (or credit note, as the case may be) against any invoice raised for such Goods.

2.4 Delivery Costs

The Company's invoices addressed to the Customer shall include, where applicable, a service charge for delivery or collection services provided for the period of the invoice. The service charge is subject to periodic review by the Company, to be exercised at its absolute discretion. The Company will give the Customer six weeks' notice of any change to the service charge rates.

2.5 Claims for Shortages

The Company (at its absolute discretion) reserves the right to reimburse or credit the Customer in respect of any claim for shortages/discrepancies of supply only if the alleged discrepancy between the Goods or numbers of Goods allegedly delivered and the Company's delivery note is reported to the Company by the Customer prior to 9.15a.m. on the day of delivery of the Goods. After this time, no such complaints shall give rise to a credit claim in favour of the Customer.

2.6 Suspension of Supplies due to matters beyond the Company's Control

- The Company shall take all reasonable steps to ensure continuation of supplies of the Goods to the Customer in accordance with these T&Cs. However, if the Company is either prevented, delayed and/or hindered from supplying any Goods to the Customer, or otherwise carrying out its obligations, by reason of any action or inaction by a Publisher, Supplier or distributor, or any circumstances beyond the Company's reasonable control including (but not limited to) strikes, lock-outs, labour disputes of any kind, industrial action of any nature whatsoever (whether any of the foregoing relate to the Company's employees, agents, contractors or others), fire, floods, storms, acts of God, delays or cancellations on the rail network, traffic accidents, serious traffic congestion, any shortage of paper, ink or fuel supply (or the supply of any other essential materials or services) or compliance with any law, governmental or regulatory order, rule, regulation, undertaking or direction (each being "an event of force

majeure”), the Company’s on-going obligations under these T&Cs will remain in effect but will be temporarily suspended without liability for so long as an event of force majeure shall continue. In addition, the Company reserves the right, without liability, to defer the date and time of delivery of the Goods and/or to reduce the volume of the Goods ordered by the Customer or ultimately to cancel the supplies of the Goods ordered by or to be supplied to the Customer if it is prevented from or delayed in the carrying on of its business due to an event of force majeure.

- b) In the event of an actual or proposed permanent cessation of supplies of any Goods (including for the avoidance of doubt a particular Title) to the Company for any reason, the Company may terminate supplies of those Goods to the Customer without liability by giving the Customer notice in writing, provided that such notice does not take effect prior to the date when the Publisher or Supplier ceases to supply those Goods to the Company.

3 THE CUSTOMER'S OBLIGATIONS

3.1 Contact Details and Credit Checks

The Customer will promptly notify the Company of any changes to its contact address(es) and/or telephone number(s) and upon closing an account shall leave a forwarding address. In addition, the Customer consents to its data being submitted by the Company to a commercial credit reference agency in order to verify its credit worthiness.

3.2 Promotional Vouchers Returned for Credit

The Customer shall have the right to use promotional vouchers for credit in lieu of making full or part payment. Should the Customer wish to use a promotional voucher, it must give the Company not less than seven (7) days’ notice that it intends to do so. All promotional vouchers must at all times be received in advance of their ‘valid from’ date.

3.3 Payment of Accounts

a) Period and Dates

The Company shall raise an invoice each month for the quantity of the Goods delivered to the Customer in the preceding period and which have not previously been invoiced. The Customer shall pay the Company’s invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Invoices must be paid either by way of cheque made payable to “Martin-Lavell” or by electronic transfer/direct debit to the bank account nominated in writing by the Company. For the avoidance of doubt, Customers may not pay invoices in cash.

b) Refused Payments

- i) A compensation charge (as notified by the Company from time to time) shall be levied each and every time a Customer’s payment by cheque or electronic transfer/direct debit is refused.
- ii) Cheques refused by the Company’s bank will not be re-presented and direct debits remaining unpaid will not be carried forward to the following week. The Company will advise the Customer of the value of the refused payment and (unless otherwise agreed) the Customer must pay the full amount of the refused payment (together with the compensation charge(s)) within a timescale specified by the Company by banker’s draft or credit or debit card.
- iii) When payments by cheque or electronic transfer/direct debit are refused on more than one occasion the Company reserves the right to insist on payment by bankers draft or credit or debit card only and/or to demand that future supplies of the Goods be pre-paid in advance of their proposed delivery to the Customer.

c) Deductions

The Customer shall make all payments due to the Company in pounds sterling in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the value of the outstanding credits is greater than 25% of the invoice value or the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer. The Company will rectify any undisputed errors and credit will be given on the next invoice.

d) Late/Under Payment

- i) The Customer accepts that queries or errors relating to invoices are not to be used as a reason for delaying payment.
- ii) If the Customer fails to pay any amount due and payable by it to the Company whether pursuant to an invoice or under any judgment in connection with these T&Cs then (without prejudice to any other right or remedy the Company may have) the following shall apply (in the Company’s absolute discretion):
 - (1) a surcharge of 1.25% of the total invoice value will be added to each of the Customer’s next invoice(s) for payment until the debt is cleared in full. For the avoidance of doubt, this charge shall be payable for each and every failure to pay, whether any failure to pay is as a result of any disputed or undisputed amount whatsoever;
 - (2) the Company may require that the Customer either pre-pays for supplies or otherwise procures suitable security for payment of the account and all other monies outstanding, in a form that is satisfactory to the Company; and/or
 - (3) the Company may, without liability, suspend supplies of the Goods (in whole or in part) until payment of the account and all other monies outstanding is otherwise received in full. The Customer will be notified of this in advance.

e) Miscellaneous

- i) Time for payment shall be of the essence.
- ii) No payment shall be deemed to have been received until the Company has received cleared funds.
- iii) All payments payable to the Company as a result of supplies of the Goods shall become due immediately on termination pursuant to condition 4 despite any other provision or purported agreement.
- iv) Notwithstanding condition 3.3d)ii), the Company may in the alternative, and at its discretion, claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- v) The Company may at any time, without notice to the Customer, set off any liability of the Customer to the Company against any liability of the Company to the Customer, whether any such liability is present or future (whenever arising), liquidated or unliquidated, under these T&Cs or not and irrespective of the currency of its denomination. Any exercise by the Company of its rights under this condition shall be without prejudice to any other rights or remedies available to it under these T&Cs or otherwise.

4 TERMINATION

4.1 Termination

- a) Notwithstanding the provisions of condition 2.6, and without prejudice to the rights and remedies otherwise open to the Company, the Company may terminate supplies to a Customer or terminate any Customer account (in whole or in part) of one or all of the Goods with immediate effect and without incurring liability, in the following circumstances:
- i) upon the termination for any reason of the Company’s arrangements with the Publisher in respect of any of the Titles or the Supplier in respect of any other Goods;
 - ii) upon the Customer’s irremediable breach of any of these T&Cs or, (where such a breach is capable of remedy) on failure to remedy any breach within ten (10) days of being given written notice of such breach by the Company of any of these T&Cs;
 - iii) where the Customer has made false claims in respect of non-receipt or shortage of supplies or in respect of other documents where in the Company’s reasonable opinion the claim has been made other than through genuine error on the Customer’s part;
 - iv) where the Customer becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986; suspends or threatens to suspend or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income; has passed a resolution for its winding up; has a petition presented to any Court for its winding-up or for an administration order, or anything analogous to any of the foregoing occurs to the Customer under the law of any jurisdiction;
 - v) where the Customer fails to pay his account in full on the due day on two (2) or more consecutive occasions or on any four (4) or more occasions in any period of six (6) months, or such other number of occasions as the Company deems unreasonable;
 - vi) where the Company obtains judgment in a court or tribunal of competent jurisdiction against the Customer in respect of a debt or unpaid

- invoice;
 - vii) where the Customer has in the Company's reasonable opinion ceased or threatened to cease to trade or carry on business;
 - viii) where an encumbrancer takes possession of, or if any distraint, execution or other process is levied or enforced on any of the property or assets of the Customer; or
 - ix) where the behaviour of the Customer is not consistent with accepted business trading relations or where he does any act which brings the reputation or goodwill of the Company into disrepute or otherwise adversely affects trading connections with or the business of the Company.
- b) The Customer shall give not less than one (1) months' notice in writing before either closing an account (or any of its Premises where the Goods are delivered) or substantially reducing supplies to be delivered at any of its Premises by more than 25% by retail sales value.

4.2 Receivership, Administration and Liquidation

- a) In the event that a court makes an order for the Customer to be wound up or the Customer's business goes into receivership or administration:
- i) the Company reserves the right to charge interest on the Customer's outstanding balance from time to time of its debts with the Company from the date of liquidation, receivership or administration (as the case may be) at 8% above the National Westminster Bank Plc base lending rate from time to time; and
 - ii) to the extent that the supplies have been made by the Company prior to the receivership or administration on, or subject to, any special terms and conditions other than those contained in this document, the Customer irrevocably and unconditionally shall be deemed to have immediately and automatically reverted to the T&Cs in this document in respect of any future supplies of Goods made on or after the receivership or administration (as the case may be).
- b) If a court makes an order for the Customer to be wound up or a receiver or administrator is appointed before the outstanding balance of its debt with the Company is paid, the Company reserves the right to repossess any Goods and associated Material in the Customer's possession up to the value of the outstanding account pursuant to condition 6.4 and in such event the repossession of those Goods will be deemed to have discharged each contract(s) between the parties for the current and any future supply of the Goods on the terms hereunder, allowing for the Company to issue valid VAT credit notes (at its absolute discretion).

4.3 Consequences of Termination

- a) On termination pursuant to condition 4.1, all rights and obligations under these T&Cs will automatically terminate with the exception of:
- i) such rights of action as shall have accrued prior to the date of termination (including, but not limited to, any and all claims for any breach of any term, condition or undertaking contained in these T&Cs); and
 - ii) all obligations under these T&Cs which are expressed to (or are by implication intended to) survive its termination and continue thereafter including (but not limited to) conditions 4.3, 5 and 6.
- b) On termination pursuant to condition 4.1, the Customer shall:
- i) pay an administration charge (as notified by the Company from time to time) in respect of the Company's reasonable fee in processing the Customer's closure of account or, where the termination is of a Premises only, for processing the closure of that Premises; and
 - ii) pay the final outstanding invoice presented by the Company to the Customer for the account or for that Premises (as the case may be).

5

LIABILITY

5.1 Liability

- a) The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- i) any breach of these T&Cs and each contract between the parties for the supply of Goods on the terms hereunder;
 - ii) any representation, statement or tortious act or omission including negligence, recklessness or wilful misconduct arising under or in connection with these T&Cs; and
 - iii) physical damage to property caused directly or indirectly by any act or omission or by the negligence, recklessness or wilful misconduct of the Company or its employees, agents and sub-contractors.
- b) Nothing in these T&Cs excludes or limits the liability of the Company:
- i) for death or personal injury caused by the Company's negligence;
 - ii) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - iii) for fraud or fraudulent misrepresentation.
- c) Subject to condition 5.1b):
- i) the Company'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 supply of the Goods shall be limited to the aggregate amount paid by the Customer for the supply of the Goods to the Company in the last twelve (12) months; and
 - ii) the Company shall not be liable to the Customer for:
 - (1) loss of profit, use, opportunity, business and/or anticipated savings;
 - (2) depletion of goodwill or reputation and/or similar losses;
 - (3) losses resulting from delay or suspension in the supply of the Goods, in whole or in part (howsoever arising);
 - (4) any liability to third parties incurred by the Customer;
 - (5) any liability arising as a result of any statement or representation made by any employee, agent or sub-contractor of the Company unless such statement or representation is confirmed in writing on the Company's headed notepaper and approved by the Company; or
 - (6) any liability arising out of or as a result of an event of force majeure,
 in each case whether direct, indirect or consequential, or any claims for consequential compensation, whatsoever and howsoever caused (whether by negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply, non-supply or late supply of the Goods by the Company and/or arising pursuant to these T&Cs.
- d) If any part of this condition 5.1 is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then, it is the parties' express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect.

5.2 Indemnity

The Customer agrees to fully indemnify the Company against all losses, liabilities, costs, damages, claims, fines and expenses (including legal expenses) which the Company suffers, or may suffer, as a result of or arising out of any breach or negligence or failure in performance by the Customer or its agents or employees of any representation, statement, warranty, condition or other provision of these T&Cs or of any damage or injury to the Company, its employees, visitors, agents, contractors, property or equipment caused by the actions or defaults of the Customer or its staff or agents whilst on, or at, the Premises or at the Company's premises.

6

RISK AND TITLE

6.1 Risk

The Goods delivered to the Customer are at the risk of the Customer from the time of delivery.

6.2 Ownership

Notwithstanding delivery and passing of risk, ownership of the Goods delivered to the Customer shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it, together with all other sums which are or which become due to the Company (or any member of its Group) from the Customer on any other account whatsoever, in respect of:

- a) the Goods delivered; and
- b) any other goods or services that the Company has supplied to the Customer.

6.3 Retention of Title

Until such time as ownership of the Goods has passed to the Customer, the Customer shall:

- a) hold the Goods delivered on a fiduciary basis as the Company's bailee;
- b) store the Goods delivered (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods delivered; and
- d) maintain the Goods delivered in satisfactory condition and keep them insured on the Company's behalf for their full resale price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

6.4 Repossession

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

- a) the Customer 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 over 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; or
- b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his property or such action is obtained against him, or the Customer is unable to pay his debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases (or threatens to cease) to trade; or
- c) the Customer fails to observe or perform any of his obligations under these T&Cs or any other contract between the Company and the Customer; or
- d) the trading arrangement(s) between the Company and the Customer ceases, is suspended or is otherwise terminated (in whole or in part) for whatever reason (whether pursuant to conditions 3.3d)ii)(3) or 4.1 or otherwise); or
- e) the Customer encumbers or in any way charges any of the Goods (or proposes to do any of the same).

6.5 Right to Payment

The Company shall be entitled to recover full payment for the Goods delivered notwithstanding that ownership of any of the Goods has not passed from the Company.

6.6 Licence to Enter Premises

The Customer grants the Company, its agents and employees an irrevocable and unconditional licence at any time to enter the Premises (and any other location) where the Goods delivered are or may be stored in order to inspect them or, where the Customer's right to possession has terminated, to recover them and all associated Material.

6.7 Continuing Rights

On termination of the account or of the supplies, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

7 GENERAL

7.1 Agency/Partnership

Nothing in these T&Cs shall be taken as constituting the Customer as an agent or partner of the Company.

7.2 Remedies

Each right or remedy of the Company under these T&Cs is without prejudice to any other right or remedy of the Company whether under these T&Cs or not.

7.3 Invalidity

If any of the clauses, or part of a clause, of these T&Cs shall be held by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the clauses or part of a clause of these T&Cs (and the remainder of such provisions) shall continue in full force and effect.

7.4 Waiver

- a) No failure by the Company to exercise nor any delay in the Company exercising any right or remedy under these T&Cs in respect of a breach by the Customer of these T&Cs shall operate or be construed as a waiver of such rights or remedy or of any other right or remedy.
- b) Any waiver by the Company of any breach of, or any default under, any provision of these T&Cs by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these T&Cs.

7.5 Variation

Subject to condition 4.2a)ii) the Company reserves the right to vary, alter or add to the terms of these T&Cs. The Company will give the Customer not less than six (6) weeks' notice of any change to these T&Cs but any variation, alteration or addition shall be without prejudice to each party's accrued rights and liabilities prior to that variation, alteration or addition.

7.6 Assignment

The Customer may not assign, sub-contract or transfer its account to a third party unless the Company gives its written consent.

7.7 Notices

Any notice given by either party to the other under these T&Cs shall be in writing addressed to the other party. "In writing" shall include by email save that email may not be used for the service of any proceedings or other documents in any legal action or method of dispute resolution.

In the case of the Company, the notice must be sent to Newspaper House, Olaf Street, London, W11 4BE (with a copy sent to the Company's registered office) or to info@martin-lavell.co.uk or such other email address nominated by the Company from time to time and, in the case of the Customer, at the Premises, or such other address or email address previously notified in writing to the party giving the notice. Notices must be delivered either by hand, by first class post or by email. The notice will be deemed to have been received at the time of delivery if delivered by hand, on the second day after posting (not including Saturdays, Sundays or public holidays) in the case of a posted letter, or at 9am on the next day after transmission if sent by email.

7.8 Confidentiality

The Customer warrants that any information about the business of the Company, which may be provided to it or comes into its possession by any means, will not be passed to any other party either orally in writing or electronically, without the express permission of the Company.

7.9 Governing Law

This Agreement shall be governed by, and construed in accordance with, English law and the Customer and the Company agree that the courts of England shall have exclusive jurisdiction in relation to any dispute or matter arising in connection with these T&Cs.