

Marston Book Services Limited, Standard Conditions of Contract - Print (2013)

These standard conditions do not apply in the case of a customer who is not contracting in the course of a business nor holding himself out as doing so. In the event of a conflict between these Terms and Conditions and a written contract existing between Marston Book Services Limited and the customer, that contract shall take precedence.

1. Definition.

'Marston' means Marston Book Services Limited.

2. Price variation.

Estimates are based upon our current costs of working and, unless otherwise agreed, are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.

3. Tax.

We reserve the right to charge the amount of any value added tax or other applicable taxes payable whether or not included on the estimate or invoice.

4. Preliminary Work.

All work carried out, whether experimentally or otherwise, at a customer's request shall be charged.

5. Copy.

A charge shall be made to cover any additional work involved where copy or files supplied by the customer are not clear, legible or accurate.

6. Electronic Files.

(a) It is the customer's responsibility to maintain a copy of any original electronic file.
(b) We shall not be responsible for checking the accuracy of supplied data from an electronic file unless otherwise agreed in writing.

7. **Design.** (a) Our estimate in respect of any design work undertaken shall cover two showings of the work to the client. Subsequent alterations to the design and/or showings of the work to the customer shall be a chargeable extra.

(b) Except where otherwise stated our estimate will not include the cost of purchasing rights to use external artwork and fonts on behalf of the customer.

(c) We reserve the right to refuse to construct anything we may find as unfit due to content or otherwise. We further reserve the right to refuse to construct anything with content that we consider to be illegal or indecent.

(d) Unless otherwise agreed in writing Marston reserves the right to draw attention to the customer's material for the purposes of promoting our services to other clients and potential clients. This clause would cover for example (but not exclusively) showing a potential client a website or brochure we have designed. This clause does not give Marston the right to reveal commercially sensitive material (such as the inner workings of a website) in such communications.

8. Proofs.

Where agreed, proofs will be submitted for customer approval. Marston shall incur no liability for any errors that are not communicated in writing to Marston when the proof is approved. Marston will charge extra for any additional proofs necessitated by the customer's alterations. Changes made by the customer to style, type or layout alterations undertaken by Marston may incur an extra charge.

9. Variations in size and position.

When electronic files or printed materials are supplied by the customer, Marston cannot be held responsible for the final position of the printed matter where finished products are within +/-1% of the specified finished trim size and to the extent that the position of print on the page is within a tolerance of +/-2mm.

10. Hosting.

(a) Hosting fees will be charged monthly after the charge has been incurred subject to the customer satisfying Marston's standard credit terms. Otherwise charges shall be quarterly, in advance.

(b) Marston will make reasonable efforts to ensure that any on-line service requested by, and/or supplied to, the customer is available at all times subject to the provisions of any Service Level Agreement. However, Marston does not guarantee the availability at all times.

(c) Marston does not guarantee the availability of any service provided.

(d) Marston will accept no liability for any direct, indirect, incidental or consequential loss howsoever caused (including, but not limited to, damages for loss of business profits, loss of business information, business interruption) resulting from the non-availability of any goods or service.

(e) Marston will not accept liability, even if Marston has been advised of the possibility of such damages, for loss of service resulting from:

Termination of service by an agent acting on Marston's behalf.

Termination of business operations of an agent acting on Marston's behalf.

Any disruptions to the on-line service delivery infrastructure.

(f) In the event of a permanent disruption of service, outside the scope of control of Marston, the customer will be informed of the loss of service.

Marston will, under these circumstances, use all reasonable efforts to resume the service with an alternative service provider.

(g) The customer may be liable for any expenses incurred in the restoration of service, under these circumstances.

11. Shipment and delivery of Orders

(a) Orders will be shipped to the customer or to an address notified in writing by the customer using an appropriate delivery method that may not provide proof of delivery. If the customer notifies Marston in writing in advance that it requires proof of delivery Marston will use an appropriate service at the cost of the customer

(b) Marston shall not be responsible for insuring against the loss or damage that may occur when orders are in transit to the customer or any address notified by the customer.

(c) If an order does not arrive at the address notified by the customer Marston will take all reasonable steps to obtain appropriate information from the carrier.

(d) Marston's liability for non delivery of an order shall be restricted to the carriage cost charged to the customer for that non delivered order plus any further amount of compensation that Marston receives from the carrier of such order.

(e) The failure of the carrier to deliver an order does not reduce the customer's liability to pay Marston's charge.

12. Delivery and Payment.

(a) Delivery of work shall be accepted when tendered and thereupon, or if earlier on notification that the work has been completed, payment shall become due.

(b) If delivery is required on hard media (e.g. CD-ROM), the price is for the delivery of the work to the customer's address as set out on the estimate. A charge may be made to cover any extra costs involved for delivery to a different address.

(c) When an expedited delivery date has been agreed, an extra cost may be charged to cover any overtime or additional costs involved in meeting that expedited delivery date.

(d) In the case of electronic delivery (for instance by e-mail or FTP), Marston shall not be held liable for any loss, inconvenience or delay caused by a technical fault with the method of delivery outside its control.

(e) Should work be suspended at the request of or delayed through any default of the customer for a period of 30 calendar days we shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage (electronic or physical).

13. Ownership and Risk.

(a) The risk in all goods delivered in connection with the work shall pass to the customer on delivery.

(b) Goods and work supplied by us remain our property until the customer has paid for them and discharged all other debts owing to us.

(c) If the customer becomes insolvent (as set out in clause 20) and the goods have not been paid for in full we may take the goods back and, if necessary, enter the customer's premises to do so, or to inspect the goods.

(d) If the customer sells goods before they have been fully paid for, the customer shall hold the proceeds of that sale on trust for Marston in a separate account. This will be held in a separate account until any sum owed to Marston has been discharged for those proceeds.

14. Claims

(a) Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to Marston within 5 working days of delivery (or, in the case of non-delivery, with 5 days of the expected delivery

date of the goods) and any claim in respect thereof must be made in writing to Marston within 10 working days of delivery (or, in the case of non-delivery, within 10 days of the expected delivery date).

(b) All other claims must be made in writing to within 10 days of delivery.

(c) Marston shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the customer proves that (i) it was not possible to comply with the requirements and (ii) advice (where required) was given and the claim made as soon as reasonably possible.

15. Intellectual Property, Trademarks and Artwork.

(a) Unless otherwise agreed in writing all original pieces of programming code and design structure shall remain the property of Marston and will be used in accordance with the provisions of 11 below.

(b) Artwork and other materials designed or created by Marston shall become the property of the customer when the customer has paid for them and discharged all other debts owing to us.

(c) If Marston is required to undertake work involving trademarks and copyrighted material the customer must satisfy us that they have the right to make use of such material.

16. Licensing.

(a) The customer has the right to make full reasonable use of any application or website provided by Marston.

(b) Notwithstanding (a) above the customer undertakes not to alter, publish or cause to be published any programming code that is part of the application or website delivered by Marston, nor to make or cause to be made copies of the application without permission from Marston.

(c) If section (b) above is breached all rights to the application revert to Marston.

17. Liability.

(a) We shall not be liable for indirect loss or third party claims occasioned by delay in completing the work or for any loss to the customer arising from delay in transit, whether as a result of our negligence or otherwise.

(b) Insofar as is permitted by law where work is defective for any reason, including negligence, our liability (if any) shall be limited to inability to procure materials required for the performance of the contract rectifying such defect. Where we perform obligations to rectify defective work under this condition the customer shall not be entitled to any further claim in respect of the work done nor shall the customer be entitled to treat delivery thereof as a ground for repudiating the contract, failing to pay for the work or cancelling further deliveries.

(c) Nothing in these conditions shall exclude our liability for death or personal injury as a result of our negligence.

18. Standing material.

Provided that the customer pays the appropriate charge for the creation of file, Marston will make available a copy upon request at no additional charge.

19. Customer's Property.

(a) Customer's property and all property supplied to us by or on behalf of the customer shall while it is in the possession of us or in transit to or from the customer be deemed to be at customer's risk unless otherwise agreed in writing and the customer should insure accordingly.

(b) We shall be entitled to make a reasonable charge for the storage of any customer's property left with us before receipt of the order or after notification to the customer of completion of the work.

20. Materials supplied by the customer

(a) If deemed unsuitable for whatever reason by Marston, any media or other materials supplied by the customer can be rejected. If materials are found to be unsuitable during production, additional costs may be incurred, except where ascertaining of unsuitability by Marston occurred only after unreasonable delay. In that circumstance the customer shall not be charged extra.

(b) Marston will take every care to secure the best results, but will not accept responsibility for imperfect work relating to defects or unsuitability of the original supplied material. This also applies where the customer provides paper where the grain direction will not run from head to foot on the finished publication.

(c) The customer will be responsible for supplying adequate quantities of materials to cover normal spoilage.

21. Insolvency.

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

(b) Marston will take every care to secure the best results, but will not accept responsibility for imperfect work relating to defects or unsuitability of the original supplied material. This also applies where the customer provides paper where the grain direction will not run from head to foot on the finished publication.

(c) The customer will be responsible for supplying adequate quantities of materials to cover normal spoilage.

22. Supplier's Identity

As per the legal requirements imposed under the Printers Imprint Act 1961 and subsequent legislation, Marston reserves the right as manufacturer to put its name and description on all goods supplied. In appropriate circumstances, custom and practice allow that the name of an intermediary may be used without compromising the legal obligations of the act.

23. General Lien.

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

24. Illegal and Offensive Matter.

(a) We shall not be required to print, typeset or host on our servers (private or public) any matter which in our opinion may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.

(b) We shall be indemnified by the customer in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent, or design or of any other proprietary or personal rights contained in any material printed for the customer. The indemnity shall include (without limitation) any amounts paid on a lawyer's advice in settlement of any claim that any matter is libellous or such an infringement.

(c) We shall further not be required to host on our servers any material which we deem to be offensive or in poor taste and reserve the right to suspend service to an offending website in breach of this clause.

25. Notice Periods.

When a customer wishes to move their files from one of our servers they shall be required to give us 28 days notice of the decision to end the service on our servers. Under such circumstances, Marston shall give the customer such access as is necessary to their files in order for them to be moved to another location. Marston reserves the right to charge a fee for any files restored from tape or for technical assistance given to facilitate the move. Marston may terminate any hosting agreement forthwith in the event of monies remaining unpaid.

26. Force majeure.

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

(b) We shall be indemnified by the customer in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent, or design or of any other proprietary or personal rights contained in any material printed for the customer. The indemnity shall include (without limitation) any amounts paid on a lawyer's advice in settlement of any claim that any matter is libellous or such an infringement.

(c) We shall further not be required to host on our servers any material which we deem to be offensive or in poor taste and reserve the right to suspend service to an offending website in breach of this clause.

27. Data Protection Act.

Marston will ensure that any work carried out on behalf of a customer complies with the provisions of the Data Protection Act and that any completed product is compliant with the act at the time of delivery.

28. Law.

These conditions and all other express and implied terms of the contract shall be governed and construed in accordance with the laws of England.

No verbal or written statement issued by Marston Book Services Limited, employees of Marston Book Services Limited or agents acting on behalf of Marston Book Services Limited shall create a warranty, or increase the scope of these terms and conditions.