

# Terms & Conditions of Sale

## 1/ Estimates

- 1.1 Subject to paragraph 1.2 all prices estimated are based upon work required to fulfil the client's instructions and are valid for a period of 7 days from the date of the estimate.
- 1.2 Prices estimated are based on the current cost of production, (materials, labour, machine time etc) and they are subject to amendment by Esmark Finch Ltd before or after acceptance of the estimate to meet a variation in the cost of production between the date of estimate and the date of execution of the order provided there is no unreasonable delay on the part of Esmark Finch Ltd.

## 2/ Customers Instructions

- 2.1 Once accepted by the customer (either verbal or written), Esmark Finch Ltd's written estimate shall be deemed to interpret correctly the customer's instructions. Where verbal instructions only are received, Esmark Finch Ltd shall not be responsible for errors or omissions due to misinterpretation of those instructions.
- 2.2 Other than only by way of correction any customer additions or alterations to copy when a proof is submitted will be charged for as author's corrections.

## 3/ Expedited Delivery

- 3.1 Should delivery of work be required urgently reasonable efforts will be made by Esmark Finch Ltd to secure freedom from defects. However, Esmark Finch Ltd shall not be held responsible for defects caused as a result of the requirement for such urgent delivery.
- 3.2 Should urgent delivery necessitate overtime work or other additional costs being occurred, an additional charge will be made to cover these additional costs.

## 4/ Outside Work

- 4.1 If Esmark Finch Ltd has to obtain goods (including typefaces, film, plates etc) and/or services not normally stocked or supplied by Esmark Finch Ltd from a third party in order to carry out the customer's instructions:
  - a) Esmark Finch Ltd acquires these goods and/or services as agent for the customer and not as principal and will have no liability to the customer in relation to the supply of those goods and/or services. Any claim by the customer in relation to the supply of those goods and/or services must be made directly against the third party.
  - b) The customer must pay for such goods and/or services.
  - c) Any such goods obtained from a third party, must be obtained on the basis that property in those goods is passed by the third party to Esmark Finch Ltd at the time the goods are incorporated into the work done by Esmark Finch Ltd for the customer.

## 5/ Suspension of Work

- 5.1 The suspension by the customer of any work, for any reason whatsoever, for a period of thirty (30) days, shall entitle Esmark Finch Ltd to payment in full for the portion of work completed.

## 6/ Cancelled Orders

- 6.1 Orders cannot be cancelled except upon terms, which compensate Esmark Finch Ltd for all work done, materials used or specially acquired to complete the order, to the date of the cancellation.

## 7/ Payment

- 7.1 Once the work is completed Esmark Finch Ltd shall invoice the customer for the estimated value of the work plus any additional charges that have occurred to enable the work to be completed to meet the customer's requirements.
- 7.2 VAT (Value Added Tax) shall be charged on the total invoice amount in line with current VAT legislation.
- 7.3 All Invoices shall be paid COD unless prior arrangements are agreed with Esmark Finch Ltd. Any credit arrangements (where Esmark Finch Ltd feel it necessary) will require an Account Application form to be completed and approved by Esmark Finch Ltd.
- 7.4 Every endeavour will be made to deliver the correct quantity ordered but owing to the difficulty of producing exact quantities, estimates and/or orders are conditional upon a margin of five percent (5%) being allowed for overs or shortages, which shall be charged for or deducted as appropriate.
- 7.5 Esmark Finch Ltd may at its option charge interest at the rate of the central bank plus 3% on amounts not paid within any agreed credit arrangements, calculated on a daily basis from the date any such amount should have been paid and until the date of payment.

## 8/ Warranties and Undertakings

- 8.1 The warranties and undertakings which apply to the goods and/or services supplied by Esmark Finch Ltd to the customer, are those applied by the Trade Practices Act 1974, as amended and in force from time to time, which is hereinafter called "the Act". All other warranties and undertakings are expressly excluded.

## 9/ Risk

- 9.1 The goods are at the risk of Esmark Finch Ltd until delivered to the customer, or collected by the customer.
- 9.2 Esmark Finch Ltd shall have no liability for any loss or damage to the goods when in transit.

## 10/ Liability

- 10.1 To the fullest extent permitted by law, except as provided herein, Esmark Finch Ltd shall not be liable to the customer in contract or tort for any loss or damage or for consequential loss or damage of any kind arising out of the supply of the goods and/or services, or rising out of Esmark Finch Ltd's negligence, or in any way whatsoever.

- 10.2 Esmark Finch Ltd's liability for a breach of a condition or warranty is hereby limited to:

1. In the case of goods, any one or more of the following:
  - a) The replacement of the goods or the supply of equivalent goods;
  - b) The repair of the goods;
  - c) The payment of the cost of replacing the goods or of acquiring equivalent goods;
  - d) The payment of the cost of having the goods repaired; or
2. In the case of services:
  - a) The supplying of the services again; or
  - b) The payment of the cost of having the services supplied again.
- 10.3 Esmark Finch Ltd will not be liable to the customer for loss, howsoever caused, of any data stored on disks, tapes, compact disks or other media supplied by the customer to Esmark Finch Ltd.
- 10.4 Subject to paragraph 10.3 hereof, Esmark Finch Ltd will not be liable to the customer for the damage, loss or destruction of any property of the customer unless the loss or damage has been caused by the failure of Esmark Finch Ltd to exercise due care and skill in handling or storing such property of the customer.
- 10.5 Force Majeure. Esmark Finch Ltd will have no liability to the customer for any loss, damage or expense suffered or incurred by the customer because of Esmark Finch Ltd's failure to observe these terms and conditions, where such failure is occasioned by any cause beyond Esmark Finch Ltd's reasonable control, including and without limiting the generality to the foregoing by war, insurrection, fires, floods, strikes, lockouts, delays in transport, breakdowns in machinery, the inability or failure of a supplier to supply necessary materials, or prohibitions or other action by any government or semi-government authority, or embargoes.
- 10.6 Delivery. The delivery terms made known to the customer are estimates only, and Esmark Finch Ltd shall not be liable for any late delivery or non-delivery, and under no circumstances shall Esmark Finch Ltd be liable for any loss, damage or delay occasioned to the customer because of late or non-delivery of the goods.

## 11/ Claims

- 11.1 Any claims against Esmark Finch Ltd shall be made in writing within fourteen (14) days of receipt of the goods by the customer. No claims shall be made by the customer beyond this period.

## 12/ Non Payment

- 12.1 Until the customer has paid all sums outstanding in relation to the goods, title of the goods shall not pass from Esmark Finch Ltd to the customer.
- 12.2 If the customer has not paid all sums outstanding in relation to the goods, if directed by Esmark Finch Ltd to do so, the customer must forthwith return the goods to Esmark Finch Ltd.

## 13/ Copyright

- 13.1 Copyright in all artistic and literary works authored by Esmark Finch Ltd shall remain the property of Esmark Finch Ltd unless there is specific agreement to the contrary at the time of Esmark Finch Ltd's acceptance of your order.
- 13.2 The customer has warranted to Esmark Finch Ltd, and Esmark Finch Ltd has accepted the customer's warranty that the customer has copyright in or a licence to authorise Esmark Finch Ltd to reproduce all artistic and literary works supplied by the customer to Esmark Finch Ltd for the purpose of the Order and the Customer hereby expressly authorises Esmark Finch Ltd to reproduce all and any of such works for the purposes foresaid.
- 13.3 The Customer indemnifies and agrees to keep indemnified Esmark Finch Ltd against all liability, losses or expenses incurred by Esmark Finch Ltd in any way directly or indirectly connected with any breach of copyright on materials supplied by the customer.
- 13.4 The customer is hereby granted a non-exclusive license to use the copyright works created by Esmark Finch Ltd for the purposes of the Order, however such licence is conditional upon Esmark Finch Ltd having received all monies due to Esmark Finch Ltd under these Terms and Conditions.

## 14/ Confidentiality

- 14.1 The customer must keep confidential and not use any ideas, systems or processes communicated or made available by Esmark Finch Ltd to the customer without Esmark Finch Ltd's written permission.

## 15/ Electronic Media

- 15.1 All Disks, tapes, compact disks or other media (other than the media supplied by the customer) used by Esmark Finch Ltd to store data for the purposes of completing the Order are the property of Esmark Finch Ltd. The customer cannot require Esmark Finch Ltd to supply to the customer any data so stored. In the event that Esmark Finch Ltd does supply data so stored or created, Esmark Finch Ltd may charge the customer for supplying such data.
- 15.2 Esmark Finch Ltd will not be held responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Esmark Finch Ltd agrees to store such data Esmark Finch Ltd may charge to do so.

## 16/ Goods and Services Tax (Value added tax)

- 16.1 The customer will be liable for any goods and services tax (VAT) payable because of the supply of goods and/or services by Esmark Finch Ltd to the customer.