



brand reminders
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Brand Reminders
General Terms and Conditions of Business

For Sales / Supply / Delivery / and Payment relating to business conducted from Barry O'Dwyer's Office trading as Brand Reminders.

Very few people like reading terms and conditions however, I must ask that you do so as the sole purpose of them is to help avoid a failure to understand correctly, miscomprehend or misinterpret the numerous stages that applies to all projects.

Barry O'Dwyer

1. **General: 'Seller', 'us' and 'we'** means Brand Reminders Promotions. **'Buyer' and 'you'** means the person, firm or company placing an order with the Seller. **'Goods'** means any goods, materials and/or services which are the subject of the Buyer's order and which are to be supplied to the Buyer by the Seller under these Conditions. **'Contract'** means the contract for the supply of Goods formed by the Seller's acceptance (which, however made or communicated, shall be deemed made subject to these Conditions) of the Buyer's order.
2. **Orders Placement** although we are pleased to accept orders by fax, telephone and email for the purpose of legibility we do require a top copy purchase order and signed on behalf of the Buyer. By 'signed' we must ask that the name of the signature is also printed as a 'squiggle' is often illegible. Your project may be delayed if a purchase order is not received. However, due to the urgency of most projects following a verbal order or email request we reserve the right to proceed with the project following receipt of your artwork. Brand Reminders is entitled to assume that the person to whom this agreement is addressed has the authority to place the work being requested. Should this not be the case then we must ask you to advise us in writing of the person who has the necessary authority so that a copy of our agreement can be sent to them. We request this as we are unaware of your company procedure. It is agreed that the client company is the customer and not the person placing the order. Should that person leave the employment of the company, the company shall remain liable for any invoices and payment due for all goods produced.
3. **Cancellation of Project** It is agreed that any project that is to be cancelled will be done so in writing no later than two days after your artwork has been received by us. It is also agreed that the customer shall pay in full the cost of any origination work and other work or materials that may of been produced or purchased for your project. Any such costs shall be deducted from any deposit received.
4. **Price variation** we reserve the right to charge for all extras requested by the Buyer that have not formed part of the original estimate, such as alterations requested by the Buyer after viewing proofs. Any variation in price must be agreed in writing by the Buyer before any extras are supplied or ordered by us. All estimates are subject to sight of final artwork.
5. **Acceptance of order** once we receive a legible written order from you, we accept your order by sending you a confirmation document which covers details such as costs, payment, lead times etc. Any of the points set out in the document which are incorrect must be notified to Barry O'Dwyer's office immediately otherwise we shall not be liable for any problems that may arise as a result of incorrect information. We reserve the right to confirm project details prior to receiving your Purchase Order.
6. **Buyer's Warranty** the Buyer warrants that they have the right to instruct us to carry out the order and that any materials delivered to us shall contain nothing obscene, blasphemous or otherwise unlawful and that the carrying out of the Buyer's order by us will not infringe the trade mark service mark, copyright, moral right or any other right of any third party. We reserve the right to decline any design that in our opinion may be illegal or of a libellous nature or an infringement of the proprietary or other rights of a third party. The Buyer shall indemnify the Seller against all losses and all actions, claims, proceedings, costs and damages (including any damages or compensation paid out by us on the advice of our legal advisors to compromise or settle any claim) and all legal costs and other expenses arising out of any



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- breach of this warranty or out of any claim by a third party based on any facts which if substantiated would constitute a breach.
7. **Delivery Dates** we shall endeavour to comply with all delivery dates submitted but because unforeseen delays can be caused by such events as industrial disputes, delivery vehicle breakdown, delivery vehicle theft, customs inspection, and traffic congestion we are not able to guarantee that any Goods will be delivered by the date submitted and we shall not be liable for any loss or damage of any kind howsoever arising by reason of any failure to deliver by a particular date. Delivery shall be to one UK mainland address only. An extra charge will be made if delivery is required to several addresses. You agree to provide a receipt for all deliveries received from us. If you request deliveries to foreign countries we can arrange this directly from our supplier by courier or by our freight forwarder. However, sufficient time should be allowed in your schedule, as we cannot guarantee exact delivery times or dates on behalf of either the courier or forwarder. Brand Reminders will also not be held responsible for any delays that may occur whilst the goods are in transit including vehicle breakdown, vehicle theft or delays in customs. Should customs wish to carry out a search they may issue a charge for their inspection and may wish to retain samples. Should this happen Brand Reminders shall not be liable for either the customs charge or any liability for replacing samples held by customs. Such costs are covered by our 'all-risks' insurance the cost of which is included in our freight forwarder charges.
 8. **Repro** all films/ printing plates shall remain the property of the supplier who produced the goods. If a customer has supplied the films they shall be returned to the customer only if we have been requested to do so in writing.
 9. **Customer artwork / disk** where a design is provided on a disk , you agree to supply a full-size hard copy colour proof. If this is not provided with the disk we will not accept any responsibility for any misunderstanding for goods that have been printed incorrectly. In the event that artwork submitted by you is not able to be produced, such as a file created in RGB and not CMYK , or is not accurate in any way, you will have to re-submit revised artwork at your cost. In the event that we are asked to alter or make changes to a design, you will be advised of any extra cost to be charged by us. Price variation - we reserve the right to increase our price quoted if after sight of final artwork / disk / proof we note extra requirements not quoted for. If you send artwork via email or ISDN you agree to either supply us with or pay us for a full size hardcopy print . No production whatsoever will proceed until you have signed as 'OK to print' any design that has been transmitted via digital transmission, especially as we have experienced elements of text, etc that can be `lost' during the sending of work by the digital process.
 10. **Buyer's Materials** all materials supplied to us by you in respect of an order shall be returned when all amounts owing on your account with us have been settled. Whilst we expect to take reasonable care of all such materials in our possession, we limit our liability for loss or damage to these materials to the retail replacement value of these materials only. If your materials include valuable or original items you are advised to insure accordingly and keep safety masters where appropriate.
 11. **Overs and unders** we will always make every effort to produce the exact quantity that is required. To ensure this we always instruct our suppliers to ensure there is no quantity under the required quantity. This may result in the production of a minimum number of overs due to the production process. We reserve the right to charge our customer for these 'overs' on a pro rata basis. We shall be entitled to deliver partial consignments.
 12. **Matching of colours** where you require a colour match to that of your house style or Corporate identity etc, a specific Pantone reference colour must be specified and be used as a separate printing ink. We will NEVER agree to producing an exact colour required if four colour process printing only is being used, as some colours are just not possible to produce exactly from four colour process. Where possible we would advise you to pay for a proof on the final material being used so that the final colour can be seen, as often the colour can visually change depending on the material being produced. Certain proofing systems such as a Cromalin or proofing paper can also mislead. Any colours that are critical MUST be discussed before any work proceeds. This also applies to PDF (Portable Document Format) proofs that are emailed where colours may appear on screen may differ slightly to the final printed item.



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13. **Transport and delivery of goods** every effort will be made to ensure that your order is properly secured and packaged prior to delivery. Any complaints regarding damaged packing must be notified to us in writing within three days from the date of delivery. Such a complaint does not entitle you to deduct any part of our charges from the agreed price of the project shown in our quotation and your purchase order. We will negotiate direct with the transport company and pass on any deduction or compensation to you as appropriate. Any delivery charges will have been notified to you as part of our estimate but excludes transit insurance. Some organisations require prior notice of delivery. Barry O'Dwyer's office shall not be responsible for making such arrangements.
14. **Goods in Transit risk** the risk but not the property in the Goods shall pass to you on delivery to the carrier of the Goods or the Royal Mail or to you where you take delivery direct. We shall not be liable for the safety of the goods thereafter and accordingly you shall indemnify us for any loss of or damage to the goods howsoever caused. You shall insure the Goods against such risks as may be commercially prudent and will on request provide us with details of the insurance policy. The property in the Goods shall not pass to you until after you have paid us all amounts owing on your account.
15. **Unloading of Goods** most of the couriers and drivers delivering from our regular suppliers have a driver only. In some cases the driver may expect help to unload the Goods being delivered. Please ensure that help to unload is available when your Goods are delivered, as we cannot be held responsible should a driver refuse to unload e.g. pallets of Goods on their own. If you are ordering Goods on behalf of a third party please ensure that the necessary arrangements to receive Goods are made with your customer. If goods need to be booked in it is your responsibility to advise us of the procedure, and phone number / contact required.
16. **Complaints** complaints regarding the quality and quantity are only accepted if they are made known to us immediately following delivery of the goods and also submitted to us in writing within three days from the date of the goods being delivered. All faulty goods must be kept as we reserve the right to carry out an examination of the goods that were delivered.
17. **Promotion** we reserve the right to display or promote all goods produced for you within our sales literature, exhibition or website. Buyers not agreeing to this must state so in writing immediately as we have no intention of trading off the values attributed to any client logo or brand for which we are producing goods, and naturally wish to maintain a good client relationship.
18. **Prices** quotations are always ex-works and exclusive of VAT unless clearly marked otherwise.
19. **Payment** shall be made by you to us for all Goods (including VAT) within 14 days from the date of the invoice or as otherwise agreed in writing with us. All invoices must be paid in full without any set off or deduction. Failure by you to pay our invoice by the due date shall entitle us to cancel or suspend all trading arrangements with you without prejudice to any other rights we may have against you. Any costs incurred in collecting the amount of the invoice including legal proceedings or otherwise shall be recoverable on an indemnity basis as part of the debt. We shall be entitled to charge you interest on any overdue invoices at the rate of 4% above the base rate of Lloyds TSB Bank plc as it is set from time to time both before and after judgment is obtained on the debt.
20. **Default** if you default in any payment or otherwise be in breach of these terms or breach of any other contract with us or compound with or execute an assignment for the benefit of your creditors or commit any act of bankruptcy or being a company enter into voluntary or compulsory liquidation or allow a receiver or administrative receiver to be appointed over all or any part of your assets or take or allow any similar action in consequence of debt or become insolvent or should we have reasonable cause to believe that any of these events is likely to occur, we may, by notice in writing to you, without prejudice to any other rights, immediately stop or suspend or cancel any uncompleted part of an order or stop any Goods in transit or require payment in advance or satisfactory security for further deliveries under an order. We may also:
 - i) At any time and without notice to you, retake possession of the Goods and we shall be entitled to enter onto premises owned or controlled by you to take back the Goods and/or



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- ii) If you have sold the Goods, make you account to us for the full amount of the proceeds of sale or the our invoiced price of the Goods whichever is higher and/or
 - iii) Terminate your authority to sell or deal with the Goods.
21. **Guarantees, Conditions and Representations** where Goods are supplied without the benefit of any manufacturer's guarantee or warranty, we shall at our option replace, repair or refund the price paid for the Goods proved to our reasonable satisfaction to be defective provided in each case:
22. the defect is not one you should have notified or did not notify to us under clause 15: and (ii) no unauthorised alterations have been made to the alleged defective Goods; and
23. the Goods have been stored, installed, maintained and used in a proper environment, with reasonable care and in accordance with any instructions supplied and you provide full information and documentation to verify compliance with these conditions.
24. **Seller's Liability** our liability for any direct physical damage as a result of our negligence shall be limited to 125% of the price paid (and not refunded) in respect of any single claim and any other liability of ours to you shall be limited to the price paid (and not refunded) for the Goods. We shall have no liability to you in respect of indirect, special, consequential or economic loss, loss of contracts, revenue, goodwill, profits or other benefits whether arising from breach of contract statutory duty negligence or in any other way. We make no representation or warranty that use of the Goods does not infringe the rights of any third party and we accept no liability in this respect.
25. **Force Majeure** we shall be under no liability if we are unable to carry out any provision of the contract for any reason beyond our control including (without limiting the foregoing) act of God, Legislation, War, Fire, Drought, Failure of power supply, lock-out, strike, Fuel shortage, or other action taken by sub-contractors employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the customer may by written notice to us elect to terminate their order and agree to pay for work done and materials used, but subject thereto shall otherwise accept delivery when possible.
26. **Third Party Rights** the parties agree that this agreement is not intended to benefit any third party and expressly excludes the Contracts (Rights of Third parties) Act 1999.
27. **Law** this contract shall be governed by and constructed in accordance with English Law and the parties submit to the non-exclusive jurisdiction of the English courts for all disputes arising in connection with it.

Barry O'Dwyer – September 2007

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