

WYNDEHAM GROUP OF COMPANIES

TERMS AND CONDITIONS OF BUSINESS – SUPPLIER

Effective from 3 January 2012

Unless expressly agreed otherwise in writing by the Wyndeham Group of Companies, signed by a Duly Authorised Representative thereof, these are the ONLY terms and conditions on which the Wyndeham Group of Companies is prepared to contract with you (the "Supplier") in relation to the sale of goods and supply of services by the Supplier.

The Wyndeham Group of Companies consists of: Wyndeham Press Group Limited (registered company no. 00933418); Wyndeham Heron Limited (registered company no. 02586277); Wyndeham Impact Limited (registered company no. 02249876); Wyndeham Apple Limited (registered no. 06941721); Wyndeham Grange Limited (registered company no. 00553857); Rhapsody Limited (registered company no. 01280705); Wyndeham Gait Limited (registered company number 00326819); Wyndeham Print Direct Limited (registered company number 03441143); Wyndeham Plymouth Limited (registered company no. 00200363); Wyndeham Peterborough Limited (registered company no. 02261988); Wyndeham Roche Limited (registered company number 00720976); Wyndeham Web Limited (registered company number 0317099); Southernprint Limited (registered company no. 01085192); Walstead Investments Limited (registered company no. 06750402); and any other entity which from time to time is a group company or affiliated company of any of the above entities (including any subsidiary or holding company of that entity or any subsidiary of any direct or indirect holding company of that entity), each being a "Group Company" and collectively being referred to as the "Group" for the purposes of these terms and conditions, as updated from time to time by the Group (the "Terms").

1. DEFINITIONS

In these Terms (unless context requires otherwise):

- 1.1 "Contract" shall mean an Order placed by a Group Company with the Supplier for the supply of goods and/or services together with these Terms.
- 1.2 "Deliverables" shall mean all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media.
- 1.3 "Duly Authorised Representative" shall mean the Group Commercial Director, the Group Procurement Manager the Group Financial Controllers and the Group Financial Director.
- 1.4 "Goods" shall mean the goods (or any part of them) set out in the Order.
- 1.5 "Group Materials" shall mean all materials, equipment, tools, drawings, specifications, computer programmes, information and data, on whatever media, supplied by any Group Company to the Supplier.
- 1.6 "Losses" shall mean all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and loss of opportunity to deploy resources elsewhere), damages, claims, demands, proceedings and judgments.
- 1.7 "Order" means an order placed by any Group Company for Goods or Services.
- 1.8 "Services" shall mean the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order.
- 1.9 "TUPE" shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

2. CONSTRUCTION OF CONTRACT

- 2.1 Where an Order is placed by a Group Company that Order together with these Terms (together a Contract) will constitute a separate binding and enforceable contract between the Supplier and the relevant Group Company placing the Order. These Terms are automatically deemed incorporated into each and every Contract, subject to any permitted variation provided for under these Terms, and shall accordingly govern the same. Where there is any manifest inconsistency between the provisions of these Terms and any Order, the provisions of the Order will apply.
- 2.2 The terms of each Contract shall apply as between the parties in respect of the matters described in the Order to the exclusion of all other terms (including any terms and conditions that the Supplier purports to apply). Any attempt by you (or on your behalf) as the Supplier to impose any other terms or conditions to the trading relationship with any Group Company is hereby explicitly and expressly deemed automatically rejected in advance (and any such terms and conditions are likewise deemed rejected automatically in advance) and will be (and is) wholly ineffective and non-binding upon each and every Group Company. No terms other than these Terms are or will be acceptable to the Group, save as expressly agreed and physically signed in writing by a Duly Authorised Representative agreeing to a variation to these Terms in accordance with these Terms.
- 2.3 These Terms are automatically deemed accepted by you as the Supplier upon the earlier of (i) the Supplier accepting a Group Company's Order; or (ii) the Supplier supplying any Goods to or commencing the provision of any Services for any Group Company. Save as expressly agreed and physically signed in writing by a Duly Authorised Representative, these Terms will apply to your entire relationship and all dealings with any Group Company. There is no need for any Group Company to issue you with duplicate copies of these Terms when each Contract is entered into and there is no obligation on any Group Company to do so. Failure to provide a copy of these Terms with each Contract shall not in any way prejudice the fact that these Terms shall govern each Contract as provided for herein.

3. DELIVERY

- 3.1 The time of delivery and performance is of the essence of the Contract and delivery shall be strictly in accordance with the Order. The relevant Group Company may reject any Goods or Services not delivered or provided on or before the delivery date specified in the Order without prejudice to its rights against the Supplier, whether for breach of contract or otherwise.
- 3.2 Unless otherwise agreed delivery shall be made at the Delivery Address specified in the Order or if none is specified, at the relevant Group Company's premises and all packing and transport costs shall be for the account of the Supplier.
- 3.3 Title in the Goods and any Deliverables shall pass to the relevant Group Company when payment is made, in whole or in part or upon delivery, whichever first occurs.
- 3.4 Risk in the Goods and any Deliverables shall pass to the relevant Group Company upon delivery.
- 3.5 Any partial delivery or performance shall be deemed a failure by the Supplier to deliver or perform in accordance with the Contract unless expressly agreed in advance and in writing with the relevant Group Company.

4. PRICE AND PAYMENT

- 4.1 Unless otherwise agreed the price for the Goods and Services supplied under any Contract shall be that specified on the relevant Order issued by the relevant Group Company or if not so specified shall not be higher than the lower of the last price for the same provided to the relevant Group Company and the Supplier's then-current standard pricing for the same based on equivalent quality and quantity standards.
- 4.2 The price specified, in the Order or otherwise determined as set out above or agreed in writing, is a fixed price and the Supplier shall not be entitled to increase the price for any reason whatsoever.
- 4.3 Payment shall be due 90 days following the end of the relevant month within which a valid invoice in respect of the Goods or Services is received.

5. WARRANTY AND QUALITY

- 5.1 The Supplier warrants, represents and undertakes that:
 - (a) any Goods supplied will on delivery be new and unused and free from defects either in material or workmanship and that they will be suitable for any purpose for which they are required and which shall have been made known by the relevant Group Company to the Supplier, of merchantable quality, that they will conform strictly to any specifications, drawings or patterns supplied by the relevant Group Company to the Supplier or in relation to which they were offered for sale, that they comply with relevant EC Directives concerning Health & Safety and UK legislation, including The Provision and Machinery (Safety) Regulations 1992 and the Supply of Machinery (Safety) Regulations 1994, and that they will conform strictly to any sample which may have been submitted by or to the relevant Group Company but without any defect which such sample may have;
 - (b) it shall perform the Services with all due skill and care and in accordance with the best practice in the field in which the Services are supplied and any officers, agents, employees, personnel or sub-contractors which it uses to provide the Services shall be suitably skilled and experience and shall adhere to the same standards;
 - (c) the Services, Goods and Deliverables will conform with all descriptions and specifications set out in the Order and will be fit for any purpose expressly or impliedly made known to the Supplier by the relevant Group Company;
 - (d) it shall provide all equipment, tools, vehicles and other such items as are required to perform the Contract at its own cost;
 - (e) it shall obtain and at all times maintain all necessary licences and consents in order to perform the Contract and comply with all applicable laws and regulations when performing the Contract;
 - (f) it shall observe all health and safety rules and regulations and any other security requirements that apply at any Group Company premises;
 - (g) it shall hold all Group Materials in safe custody at its own risk, maintain the Group Materials in good condition until returned to the relevant Group Company and not dispose of or use the Group Materials other than in accordance with the Contract or such other written instructions or authorisation provided by the relevant Group Company;
 - (h) it shall not do or omit to do anything which may cause the Group to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business and the Supplier acknowledges that the Group may rely or act on the Services.
- 5.2 At any time prior to delivery of the Goods to the relevant Group Company, it shall have the right to inspect and test the Goods or Deliverables at all times.
- 5.3 If the results of such inspection or testing cause the relevant Group Company to be of the opinion that the Goods or Deliverables do not conform or are unlikely to conform with the Order, the Contract or to any specifications and/or patterns supplied or advised by the relevant Group Company to the Supplier, the relevant Group Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the relevant Group Company shall have the right to require and witness further testing and inspection.
- 5.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for all aspects of the quality of the Goods or Deliverables and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under any Contract.

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5.5 If any of the Goods or Deliverables fail to comply with the provisions set out in this clause 5 the relevant Group Company shall be entitled to avail itself of any one or more remedies listed in clause 12.

6. INDEMNITY

6.1 The Supplier shall keep the Group indemnified at all times and in full against all Losses awarded against or incurred or paid by the Group as a result of or in connection with:

(a) any claim made against any Group Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or Deliverables, to the extent that the defect in the Goods or Deliverables is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(b) any claim made against any Group Company by a third party arising out of, or in connection with, the supply of the Goods or Deliverables or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; or

(c) any claim made against any Group Company for actual or alleged infringement of a third party's intellectual property rights or other rights arising out of, or in connection with, the manufacture, supply or use of the Goods or Deliverables, or receipt, use or supply of the Services.

6.2 For the duration of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with each Contract and shall, on the Group's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

6.3 This clause 6 shall survive termination of the Contract

7. GROUP'S GOODS AND MATERIALS

7.1 All Group Materials supplied by or on behalf of the relevant Group Company, are and shall remain the property of the relevant Group Company, and shall not be copied, or used in any way whatsoever except in connection with supply of Goods, Deliverables and Services pursuant to this Contract. If any are damaged or destroyed while in the Supplier's possession or control the Supplier shall on demand pay to the relevant Group Company the cost to the relevant Group Company of repairing or (at the relevant Group Company's option) replacing them.

7.2 The Supplier must check all Group Materials supplied to it by or on behalf of the relevant Group Company and notify the relevant Group Company in writing of any defects or discrepancies forthwith.

7.3 Title to and all rights (including copyright and any other intellectual property rights) in any additions to Group Materials supplied by or on behalf of the relevant Group Company shall, in so far as the relevant Group Company shall not be entitled thereto by operation of law, forthwith vest in and are hereby assigned to the relevant Group Company.

7.4 The Supplier shall not be entitled to any lien on any such materials, documents, data and computer programmes for sums due for work done under the Contract or otherwise.

7.5 The relevant Group Company shall be entitled to enter the Supplier's premises and remove all Goods, Deliverables, materials, documents, data and computer programmes to which the relevant Group Company is entitled.

7.6 The Supplier will redeliver such Group Materials including any copies, extracts and abstracts thereof to the relevant Group Company in good and serviceable condition.

7.7 This clause 7 shall survive termination of the Contract.

8. INTELLECTUAL PROPERTY

8.1 In respect of the Goods and any goods that are transferred to any Group Company as part of the Services under a Contract, including without limitation the Deliverables or any part of them, the Supplier warrants, represents and undertakes that it has and will have full clear and unencumbered title to all such items and that at the date of delivery of such items to the relevant Group Company, it will have full unrestricted rights to sell and transfer all such items to the relevant Group Company.

8.2 The Supplier hereby assigns to the relevant Group Company, with full title guarantee and free from all third party rights, all intellectual property rights in the products of the Services, including, but not limited to the Deliverables.

8.3 The Supplier shall obtain waivers of all moral rights in the products of the Services, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

8.4 The Supplier shall, promptly at the relevant Group Company's request, do (or procure to be done) all such further acts and things and execute all such other documentation as the relevant Group Company may from time to time require for the purpose of securing for the relevant Group Company the full benefit of any Contract, including all right, title and interest in and to the intellectual property rights assigned to the relevant Group Company in accordance with clause 8.2.

8.5 All Group Materials are the exclusive property of the relevant Group Company.

8.6 This clause 8 shall survive termination of the Contract.

9. NOTICES

Any notification hereunder shall be in writing and where given by the relevant Group Company by first class registered or recorded delivery to the Supplier's address given in the Order, shall be deemed to have been received by the Supplier at the expiration of two days from posting in the case of inland and five days from posting in the case of overseas letters.

10. CANCELLATION, SUSPENSION AND TERMINATION

10.1 The relevant Group Company may by notice in writing to the Supplier cancel or vary any Contract formed pursuant hereto and or suspend or postpone the manufacture and delivery of the Goods or any part thereof and all costs necessarily incurred by the Supplier as a result thereof which cannot be mitigated by the Supplier using its best endeavours to do so shall be borne by the relevant Group Company. The date of delivery shall, if necessary, be extended to such later date(s) as shall be reasonable having regard to the period of such suspension or postponement or nature of the variation.

10.2 Without limiting its other rights or remedies, the relevant Group Company may terminate any and all Contracts with immediate effect by giving written notice to the Supplier if:

(a) the Supplier commits a material or persistent breach of a Contract and (if such a breach is remediable) fails to remedy that breach within [28] days of receipt of notice in writing of the breach;

(b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

(e) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within seven days;

(f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);

(g) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-clauses 10.2(b) to clause 10.2(g) (inclusive);

(i) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or

(j) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

10.3 Without limiting its other rights or remedies, the relevant Group Company may terminate any Contract:

(a) in respect of the supply of Services, by giving the Supplier 14 day's written notice; and

(b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the relevant Group Company shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

10.4 In any of the circumstances in these Terms in which the relevant Group Company may terminate a Contract, where both Goods and Services are supplied, the relevant Group Company may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

11. CONSEQUENCES OF TERMINATION

11.1 On termination of any Contract for any reason:

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(a) the Supplier shall immediately deliver to the relevant Group Company all Goods that have been paid for but not yet delivered and where Services are terminated, all Deliverables, whether or not then complete, and return all Group Materials. If the Supplier fails to do so, then the relevant Group Company may, without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the relevant Contract;

(b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of any Contract which existed at or before the date of termination;

(c) clauses which expressly or by implication have effect after their termination shall continue in full force.

12. REMEDIES

12.1 If the Supplier fails to deliver the Goods or Deliverables and/or perform the Services by the applicable date(s) specified in the relevant Order, the relevant Group Company shall, without limiting its other rights or remedies, have one or more of the following rights:

(a) to terminate any or all Contracts with immediate effect by giving written notice to the Supplier;

(b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods or Deliverables which the Supplier attempts to make;

(c) to recover from the Supplier any costs incurred by the relevant Group Company in excess of what would have been paid to the Supplier in obtaining substitute Goods or Deliverables and/or Services from a third party;

(d) where the relevant Group Company has paid in advance for Services that have not been provided by the Supplier and/or Goods or Deliverables which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and

(e) to claim damages for any additional Losses incurred by the relevant Group Company which are in any way attributable to the Supplier's failure to meet such dates.

12.2 If the Supplier has delivered Goods or Deliverables that do not comply with the Contract, without limiting its other rights or remedies, the relevant Group Company shall have one or more of the following rights, whether or not it has accepted the Goods or Deliverables:

(a) to reject the Goods or Deliverables (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

(b) to terminate any or all Contracts with immediate effect by giving written notice to the Supplier;

(c) to require the Supplier to repair or replace the rejected Goods or Deliverables, or to provide a full refund of the price of the rejected Goods or applicable Services (if paid);

(d) to refuse to accept any subsequent delivery of the Goods or Deliverables which the Supplier attempts to make;

(e) to recover from the Supplier any expenditure incurred by the relevant Group Company in obtaining substitute goods from a third party in excess of what would have been paid to the Supplier; and

(f) to claim damages for any additional Losses incurred by the relevant Group Company arising from the Supplier's failure to supply Goods or Deliverables in accordance with the Contract.

12.3 These Terms shall extend to any substituted or remedial Services and/or repaired or replacement Goods or Deliverables supplied by the Supplier and are in addition to (and do not in any way prejudice) any other rights or remedies any Group Company may have available to it at law, in equity or otherwise.

13 CONFIDENTIALITY

The Supplier shall keep in strict confidence all technical or commercial information, know-how, specifications, inventions, processes or initiatives which are of a confidential or commercially sensitive nature and have been disclosed to the Supplier by or on behalf of any Group Company or its agents and any other confidential information concerning any Group Company's business or its prices or products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purposes of discharging the Supplier's obligations to any Group Company and shall ensure that such employees, agents or sub-contractors are subject to the same obligations of confidentiality as bind the Supplier. For the avoidance of doubt, this clause 13 shall survive termination of the Contract.

14 TUPE

14.1 The parties to the Contract agree and accept that TUPE is unlikely to apply in respect of the arrangements contemplated by any Contract.

14.2 Notwithstanding the above, in the event that TUPE is deemed to apply or any third party (including but not limited to the Supplier's personnel) claims that TUPE applies, the Supplier shall indemnify every Group Company in full in relation to any Losses incurred by any Group Company as a result of the transfer or deemed transfer (or claimed transfer) of any of the Supplier's personnel or other third party to a Group Company pursuant to the operation of TUPE and/or the termination by a Group Company or pursuant to TUPE of any of the Supplier's personnel or other third party.

14.3 For the avoidance of doubt, if any of the Supplier's personnel or other third party is deemed to have transferred to a Group Company pursuant to TUPE or otherwise, the relevant Group Company to whom they are deemed to have transferred shall be entitled to terminate their employment and the Supplier shall fully indemnify every Group Company in relation to all Losses resulting from such termination.

15 NO PARTNERSHIP

The Supplier and each Group Company are independent contractors with respect to each other and nothing in any Contract shall create an association, partnership, joint venture or agency relationship between them.

16 ASSIGNMENT & SUB CONTRACTING

The Supplier shall not assign or sub contract or otherwise make over any of its rights without the prior written permission of the Group.

17 WAIVER

The failure or neglect of any Group Company to enforce at any time any of the provisions of any Contract formed pursuant hereto shall not be construed nor shall be deemed to be a waiver of the any Group Company's rights under any Contract nor in any way shall such a failure or neglect effect the validity of the whole or any part of any Contract nor prejudice any Group Company's right to take subsequent action.

18 SEVERANCE

If any provision in these Terms (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part provision, to the extent required, shall be deemed not to form part of these Terms, and the validity and enforceability of the other provisions of these Terms shall not be affected.

19 GOVERNING LAW

Each Contract shall be subject to English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

20 OTHER RIGHTS AND REMEDIES

Nothing in these Terms shall prejudice any condition or warranty, express or implied, or any right or remedy to which the Group is entitled in relation to the Goods, Deliverables and Services by virtue of statute, common law or other.