

Introducing the New Printing Trade Customs

In the summer of 1992, Printing Industries of America, the National Association of Printers and Lithographers, and the Graphic Arts Technical Foundation embarked on a reevaluation and revision of the printing industry's trade customs. Industry trade customs were last updated in 1985 by the three associations. Since that time, advances in technology and resulting business practices caused those trade customs to become out of date.

The trade customs revision effort was led by longtime industry activist Bill Treadaway, working with the oversight and guidance of an ad-hoc committee of representatives from the three associations and a steering committee of graphic arts executives.

Some 250,000 survey forms were distributed throughout the three associations' memberships and inserted into numerous trade publications.

Building upon the previous trade customs, a new set of trade customs was drafted. They are based on the survey responses, input and suggestions from many industry sources, research inside and outside the graphic arts industry, all subject to legal review. The new trade customs were officially approved in the spring of 1994 by the boards of each of the three associations involved.

Why Revise?

A major reason for the revision is to address changes caused by technology. Desktop publishing and electronic prepress technologies have had a powerful impact on graphic arts business practices, blurring the lines that once clearly separated editorial, design and production functions. Ironically, just as the revised trade customs were being adopted in 1985, desktop publishing was born and it soon began to stretch the traditional understanding of ownership, liability and production responsibilities, once divided between and now shared by creators and manufacturers of printed products.

Some of the most common trade customs wrangles reported by members over the past few years revolved around the exchange of electronic data. Here are a few examples you will probably recognize.

A printer or service bureau runs out film from customer desktop files and the job is printed. Due to a slight mismatch of fonts, some line endings change deep in the text, affecting the layout. The customer does not proof the whole document again and only finds the new problem after printing.

Who's at fault?

A service bureau estimates fifteen minutes of output time for a four-color desktop file based on an initial understanding of the design and complexity of the file. When the final file continues outputting well past 30 minutes with no end in sight, the customer is contacted and is furious. "But your estimate said . . ." Who's at fault?

A customer calls his printer and requests "the files" from a particular job done a year ago. The printer's desktop department had built complex pages with the raw data and images supplied by the customer. By verbal understanding, the printer archives the finished files for future reprints and voluntarily did not charge the customer for storage. Is the printer obliged to return value-added electronic files, and at what cost to the customer?

The good news about the new trade customs is that they now encompass the world of electronic data and digital media. But there is also a bad news side to the story. No trade customs, no matter how up-to-date, can prevent disagreements with customers if the trade customs are not used effectively.

According to Bill Treadaway, the conventional practice of printing the trade customs onto the back of quotations is simply not sufficient either to avoid the common kinds of problems exemplified above, or to stand up in court. What graphic arts companies need is an instrument of agreement between themselves and their customers. That means an up-front meeting of the minds, in writing, between the company and the client, in which the issues of ownership, production responsibilities and liabilities are recognized and agreed to.

What Are Trade Customs?

In the technical language of the Uniform Commercial Code, a trade custom is defined as: "Any practice or method of dealing having such regularity of observation in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The distance and scope of such a usage are to be proved as facts. If it is established that such usage is embodied in a written trade code or similar writing the

interpretation of the writing is for the court."

The implication here, to paraphrase, is: "If it's in the trade customs, you have to abide by it" But it's not as simple as that. You still have to spell out in detail the specific terms and conditions governing your agreement with the client.

Take for example clause 21 of the new trade customs, "Storage." Relate back to the example about a customer wanting computer files returned. The relevant part of clause 21 reads: "The provider will retain intermediate materials until the related end product has been accepted by the customer. If requested by the customer, intermediate materials will be stored for an additional period at additional charge."

Nowhere in this clause, or anywhere else in the document, do the trade customs spell out how long intermediate materials will be stored, how much the storage charge will be, or exceptions to the rule as they relate to a particular job or type of materials.

There is also no definition of intermediate materials.

Put It In Writing

The bottom line is simple. The trade customs alone cannot inform your customers in advance about your specific terms and conditions of sale. It is still the responsibility of the printer to spell out the details in writing and see that the client acknowledges and understands them.

Bill Treadaway recommends one of three instruments of agreement:

A document describing your terms and conditions of sale. This document could incorporate the trade customs, but it should include the specifics that only you can decide.

A signed contract.

A letter to the client before work begins confirming the details of a given job.

Preamble To The Trade Customs

As the name suggest, the Printing Industry Trade Customs presented in this document reflect the common business practices of the printing industry. However, "Trade Customs" are not necessarily "recommended" practices. Some printers may elect to follow them; others may not. The use of any Trade Custom must always be an independent, individual business decision. As each company drafts its own contractual provisions, it will also want to consider customers' wishes, relationships with potential customers, and other competitive issues.

It is important to note that Trade Customs having to do with rates, payment terms, and warranties may be subject to modification.

Trade Customs of The Printing Industry of North America

1. Quotation A quotation not accepted within thirty days may be changed.

2. Orders Acceptance of orders is subject to credit approval and contingencies such as fire, water, strikes, theft, vandalism, acts of God, and other causes beyond the providers control. Canceled orders require compensation for incurred costs and related obligations.

3. Experimental Work Experimental or preliminary work performed at customer's request will be charged to the customer at the provider's current rates. This work cannot be used without the provider's written consent.

4. Creative Work Sketches, copy, dummies and all other creative work developed or furnished by the provider are the provider's exclusive property. The provider must give written approval for all use of this work and for any derivation of ideas from it.

5. Accuracy of Specifications Quotations are based on the accuracy of the specifications provided. The provider can re-quote a job at time of submission if copy, film, tapes, disks, or other input materials don't conform to the information on which the original quotation was based.

6. Preparatory Materials Art work, type, plates, negatives, positives, tapes, disks, and all other items supplied by the provider remain the provider's exclusive property.

7. Electronic Manuscript or Image It is the customer's responsibility to maintain a copy of the original file. The provider is not responsible for accidental damage to media supplied by the customer or for the accuracy of furnished input or final output. Until digital input can be evaluated by the provider, no claims or promises are made about the provider's ability to work with jobs submitted in digital format, and no liability is assumed for problems that may arise. Any additional translating, editing, or programming needed to utilize customer-supplied files will be charged at prevailing rates.

8. Alterations/Corrections Customer alterations include all work performed in addition to the original specifications. All such work will be charged at the provider's current rates.

9. Prepress Proofs The provider will submit prepress proofs along with original copy for the customer's review and approval. Corrections will be returned to the provider on a "master set" marked "OK", "OK with corrections", or "Revised proof required" and signed by the customer. Until the master set is received, no additional work will be performed. The provider will not be responsible for undetected production errors if:

- proofs are not required by the customer;
- the work is printed per the customer's OK.;
- requests for changes are communicated orally.

10. Press Proofs Press proofs will not be furnished unless they have been required in writing in the provider's quotation. A press sheet can be submitted for the customer's approval as long as the customer is present at the press during make ready. Any press time lost or alterations/corrections made because of the customer's delay or change of mind will be charged at the provider's current rates.

11. Color Proofing Because of differences in equipment, paper, inks, and other conditions between color proofing and production pressroom operations, a reasonable variation in color between color proofs and the completed job is to be expected. When variation of this kind occurs, it will be considered acceptable performance.

12. Over-Runs or Under-Runs

Over-Runs or Under-Runs will not exceed 10% of the quantity order. The provider will bill for actual quantity delivered within this tolerance. If the customer requires a guaranteed quantity, the percentage of tolerance must be stated at the time of quotation.

13. Customer's Property The provider will only maintain fire and extended coverage on property be-

longing to the customer while the property is in the provider's possession. The provider's liability for this property will not exceed the amount recoverable from the insurance. Additional insurance coverage may be obtained if it is requested in writing, and if the premium is paid to the provider.

14. Delivery

Unless otherwise specified, the price quoted is for a single shipment, without storage, F.O.B. provider's platform. Proposals are based on continuous and uninterrupted delivery of the complete order. If the specifications state otherwise, the provider will charge accordingly at current rates. Charges for delivery of materials and supplies from the customer to the provider, or from the customer's supplier to the provider, are not included in quotations unless specified. Title for finished work passes to the customer upon delivery to the carrier at shipping point; or upon mailing of invoices for the finished work of its segments, whichever occurs first.

15. Production Schedules Production schedules will be established and followed by both the customer and the provider. In the event that production schedules are not adhered to by the customer, delivery dates will be subject to negotiation. There will be no liability or penalty for delays due to state of war, riot, civil disorder, fire, strikes, accidents, action of government or civil authority, acts of God, or other causes beyond the control of the provider. In such cases, schedules will be extended by an amount of time equal to delay incurred.

16. Customer-Furnished Materials Materials furnished by customers or their suppliers are verified by delivery tickets. The provider bears no responsibility for discrepancies between delivery tickets and actual counts. Customer-supplied paper must be delivered according to specifications furnished by the provider. These specifications will include correct weight, thickness, pick resistance, and other technical requirements. Artwork, film, color separations, special dies, tapes, disks, or other materials furnished by the customer must be usable by the provider without alteration or repair. Items not meeting this requirement will be repaired by the customer, or by the provider at the provider's current rates.

17. Outside Purchases Unless otherwise agreed in writing, all outside purchases as requested or authorized by the customer, are chargeable.

18. Terms/Claims/Liens Payment is net cash 30 calendar days from date of invoice. Claims for defects, damages or shortages must be made by the customer in writing no later than 10 calendar days after delivery. If no such claim is made, the provider and the customer will understand that the job has been accepted. By accepting the job, the customer acknowledges that the provider's performance has fully satisfied all terms, conditions, and specifications. The Provider's liability will be limited to the quoted selling price of defective goods, without additional liability for special or consequential damages. As security for payment of any sum due under the terms of an agreement, the provider has the right to hold and place a lien on all customer property in the provider's possession. This right applies even if credit has been extended, notes have been accepted, trade acceptances have been made, or payment has been guaranteed. If payment is not made, the customer is liable for all collection costs incurred.

19. Liability - A. Disclaimer of Express Warranties: Provider warrants that the work is as described in the purchase order. The customer understands that all sketches, copy, dummies, and preparatory work shown to the customer are intended only to illustrate the general type and quality of the work. They are not intended to represent the actual work performed. **B. Disclaimer of Implied Warranties:** The provider warrants only that the work will conform to the description contained in the purchase order. The provider's maximum liability, whether by negligence, contract, or otherwise, will not exceed the return of the amount invoiced for the work in dispute. Under no circumstances will the provider be liable for specific, individual, or consequential damages.

20. Indemnification The customer agrees to protect the provider from economic loss and any other harmful consequences that could arise in connection with the work. This means that the customer will hold the provider harmless and save, indemnify, and otherwise defend him/her against claims, demands, actions and proceedings on any and all grounds. This will apply regardless of responsibility for negligence.

A. Copyrights. The customer also warrants that the subject matter to be printed is not copyrighted by a third party. The customer also recognizes that because subject matter does not have to bear a copyright notice in order to be protected by copyright law, absence of such notice does not necessarily assure a right to reproduce. The customer further warrants that no copyright notice has been removed from any material used in preparing

the subject matter for reproduction. To support these warranties, the customer agrees to indemnify and hold the provider harmless for all liability, damages, and attorney fees that may be incurred in any legal action connected with copyright infringement involving the work produced or provided.

B. Personal or Economic Rights. The customer also warrants that the work does not contain anything that is libelous or scandalous, or anything that threatens anyone's right to privacy or other personal or economic rights. The customer will, at the customer's sole expense, promptly and thoroughly defend the provider in all legal actions on these grounds as long as the provider:

1. promptly notifies the customer of the legal action **2.** gives the customer reasonable time to undertake and conduct a defense. The provider reserves the right to use his or her sole discretion in refusing to print anything he or she deems illegal, libelous, scandalous, improper or infringing upon copyright law.

21. Storage The provider will retain intermediate materials until the related end product has been accepted by the customer. If requested by the customer, intermediate materials will be stored for an additional period at additional charge. The provider is not liable for any loss or damage to stored material beyond what is recoverable by the provider's fire and extended insurance coverage.

22. Taxes All amounts due for taxes and assessments will be added to the customer's invoice and are the responsibility of the customer. No tax exemption will be granted unless the customer's "Exemption Certificate" (or other official proof of exemption) accompanies the purchase order. If, after the customer has paid the invoice, it is determined that more tax is due, then the customer must promptly remit the required taxes to the taxing authority, or immediately reimburse the provider for any additional taxes paid.

23. Telecommunications Unless otherwise agreed, the customer will pay for all transmission charges. The provider is not responsible for any errors, omissions, or extra costs resulting from faults in the transmission.