Terms & Conditions for sale of Goods and Services

Swanline Print Limited

1. INTERPRETATION
1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Buyer: means the person whose Order for the Goods and/or Services is accepted by the Seller.

Charged Stock: means any Goods which the Seller agrees to retain at its premises at the Buyer's request until the date of its release.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with condition 14.4.

Confidential Information: means any information of a secret or confidential nature including (but not limited to) technical and non-technical information, business and marketing plans and policies, client lists, terms of contracts or agreements and other similar information relating to the Seller and its suppliers or customers, excluding information known to the Buyer, or legally available on a non-confidential basis to the Buyer before it was disclosed to the Buyer by the Seller.

Contract: the contract between the Buyer and the Seller for the sale and purchase of the Goods and/or Services in accordance with these Conditions and any Order.

Goods: the goods (or any part of them) set out in the Order.

Order: the order by the Buyer for the Goods and/or Services, as set out in the purchase order or other form of the Buyer.

Seller: means Swanline Print Limited, Whitebridge Park, Whitebridge Way, Stone, Staffordshire ST15 8LQ.

Services: the services, including without limitation any Deliverables, to be provided by the Seller under the Contract as set out in the Order.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller.

Construction. In these Conditions, the following rules apply:

- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its personal representatives, successors or permitted assigns.
- A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- A reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Seller shall sell and the Buyer shall buy the Goods and/or Services in accordance with the terms of this Contract.

2.2 These Conditions and the Order apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.3 The Order constitutes an offer by the Buyer to the Seller to purchase the Goods and/or Services in accordance with these Conditions.

2.4 The Order shall only be accepted when the Seller has issued a written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.5 Any quotation or estimate of the Seller shall be an invitation to the Buyer to make an offer. No Order of the Buyer placed with the Seller on the basis of any estimate or quotation shall be binding unless that Order has been accepted in accordance with condition 2.4 above.

2.6 Once an Order has been accepted by the Seller, it cannot be cancelled by the Buyer.

3. SPECIFICATIONS AND SAMPLES

3.1 If the Services are to be performed or the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any intellectual property right of any person which results from the Seller's use of the Buyer's specification.

3.2 The Seller reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods or Services are to be supplied to the Seller's specifications, which do not materially affect their quality or performance.

3.3 All material grades are quoted in nominal terms and may vary by weight or caliper. A reference to the nominal weight of any packing paper or linen includes faxes and e-mails.

3.4 All material grades are quoted in nominal terms and may vary by weight or caliper. A reference to the nominal weight of any packaging paper or linen constitutes the said paper or linen to perform to a minimum standard; such standard to be provided by the Seller if requested by the Buyer.

3.5 All sketches, origination work, drawings, artwork, specifications, mouldings, dies and other such items prepared or provided by the Seller shall remain the property of the Seller and shall be returned to the Seller on request. The Seller may destroy or dispose of such items at its absolute discretion and without liability to the Buyer.

3.6 Samples are used solely to enable the Buyer to judge for itself the quality of the bulk and as a mere indication of the type and quality of the Goods and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample.

4. BUYER'S MATERIALS

4.1 The Buyer shall retain duplicates or copies of any master artwork, films, tapes, disks and other materials provided by it to the Seller in connection with the Contract ("Buyer's Materials").

4.2 The Buyer shall insure all Buyer's Materials and Charged Stock whilst they are in the possession or custody of the Seller for all risks (including loss of profit) in full.

5. PRICE

5.1 The price payable for Goods and/or Services ("Price"):

(a) shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the Order;

(b) is exclusive of any applicable sales or value added tax, which the Buyer shall be additionally liable to pay to the Seller, at the rate applicable at the appropriate tax point;

(c) is ex works unless otherwise stated, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance;
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9.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-
(a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are ready for collection; or
(b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery.

9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cleared funds payment in full of the Price and all other goods agreed to be sold by the Seller to the Buyer for which payment is due. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

10. LIABILITY

Nothing in these Conditions shall limit or restrict the Seller’s liability for death or personal injury resulting from its negligence or for any injury or damage caused by a defective product within the meaning of the Consumer Protection Act 1987, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

The Seller’s aggregate liability for any claim or series of claims arising out of the Contract or out of any act or series of acts or omissions or any default or defaults of the Seller (whether arising from the Seller’s negligence or otherwise) shall not (subject to the provisions of condition 10.1) exceed the Price of the Goods and/or Services supplied pursuant to the Contract under which the liability arises.

Subject to condition 10.1, the Seller shall not be liable to the Buyer in respect of any delay in performing, or any failure to perform, any of the Seller’s obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond the Seller’s reasonable control including, without prejudice to the generality of the foregoing, act of God, explosion, flood, tempest, fire or accident, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, or power failure or breakdown in machinery.

11. BREACH & INSOLVENCY

If any of the following events occur, are threatened or in the opinion of the Seller are reasonably likely to occur:

(a) the Buyer commits any breach of the Contract and fails to remedy such breach (if capable of remedy) within a period of 7 days from receipt of notice in writing from the Seller requesting such breach to be remedied;
(b) any distress or execution is levied upon any of the goods or property of the Buyer;
(c) the Buyer (or where the Buyer is a partnership any partner thereof) is unable to pay his debts or there is made any arrangement with or for the benefit of its or his creditors or a petition is presented or an order is made for the Buyer to become a bankrupt; or
(d) the Buyer (being a limited company) has an administrative receiver or a receiver and manager appointed of the whole or any part of its undertaking, property or assets or a petition is presented or an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Buyer or for the appointment of an administrator thereof;
the Seller shall be entitled without prejudice to its other rights under this Contract to immediately suspend further performance of the Contract and of any other contract between the Seller and the Buyer until the default has been made good or to terminate the Contract or any other contract between the Seller and the Buyer or any unfulfilled part thereof or at the Seller’s option to make partial supplies of Goods and/or Services.

Notwithstanding any such termination the Buyer shall immediately pay to the Seller at the Contract rate for all work done, materials used and Goods and Services delivered or performed (as the case may be) up to and including the date of termination and shall in addition indemnify the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-performance of the Contract including the cost of any material, plant or tools used or intended to be used and the cost of labour and other overheads including a percentage in respect of profit.

12. EXPORT TERMS

Where the Goods are supplied for export from the United Kingdom, the provisions of this condition 12 shall apply notwithstanding any other provision of these Conditions.

12.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination, or any other country through which the Goods travel on their way to the destination country, and for the payment of any duties due.

12.3 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979 (as amended).

12.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller’s premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

12.5 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by an independent financial institution acceptable to the Seller.

13. PRODUCT LIABILITY & COMPLIANCE

13.1 The Buyer shall ascertain and comply with applicable laws relating to the Goods (including any consumable items), their operation, use and disposal, including compliance with customs declarations and formalities and shall ensure that the Goods are used only for the purposes and in the manner for which they were designed and supplied.

13.2 The Buyer shall indemnify the Seller in respect of any liability arising in relation to any breach of the Buyer’s obligations under this condition 13 whether such liability arises as a result of a third party’s use or operation of the Goods or otherwise.

14. GENERAL

14.1 The Seller may perform any of its obligations or exercise any of its rights under any Contract by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

14.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.4 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

14.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby. If any invalid, unenforceable or illegal provision of these Conditions would be valid, enforceable and legal if some part of it were deleted, the parties
shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties’ original commercial intention.

14.6 Save as expressly stated in these Conditions, a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

14.7 The Buyer shall not at any time disclose any Confidential Information relating to the Seller or use such information in any manner which might be detrimental to the Seller, excluding any Confidential Information that the Buyer is required to disclose by law, court order or any governmental or regulatory authority, provided that, to the extent it is legally permitted to do so, the Buyer gives the Seller as much notice of such disclosure as possible and takes into account the reasonable requests of the Seller in relation to the content of such disclosure.

14.8 The Buyer is not permitted to assign any Contract or any of its obligations under it without the written consent of the Seller.

14.9 The Contract shall be governed by the laws of England and Wales and the Buyer irrevocably submits to the jurisdiction of the English and Welsh courts over any claim or matter arising under or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).