

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.

1.2 **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 packaging paper or liner is indicative of the performance characteristics of that paper or liner. The minimum standard of the performance characteristics is to be provided by the Seller if requested by the Buyer.

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 liner constitutes the said paper or liner 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 should 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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- (d) does not include the cost of pallets, cases or other packing materials which shall remain the property of the Seller and will be returnable at the Buyer's expense at the request of the Seller (or paid for if not returned with 30 days of request); and
 - (e) does not include the cost of artwork origination, printing plates or cutting tools unless otherwise stated on a quotation or other correspondence.
- 5.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery of the Goods or performance of the Services, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller.

6. PAYMENT

- 6.1 The Seller shall invoice the Buyer for the Price on or at any time after delivery of the Goods or performance of the Services or any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 6.2 Unless agreed otherwise in an Order, the Buyer shall pay the Price (in full, in sterling and clear of any banking charges) within 30 days of the date of the Seller's invoice.
- 6.3 The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.4 The Buyer shall not be entitled to set off against any monies due to the Seller under the Contract any amount claimed by or due to the Buyer from the Seller whether pursuant to the Contract or on any other account.
- 6.5 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
- (a) cancel the Contract or suspend any further deliveries or supplies to the Buyer;
 - (b) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of four per cent per annum above Lloyds Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
 - (c) charge the Buyer for all expenses (including legal fees) incurred by the Seller in collecting the amounts due.

7. DELIVERY

- 7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 7.2 Any dates quoted for delivery of the Goods or for the supply or completion of the Services (as the case may be) are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. Time for delivery shall not be of the essence. Where postponement of delivery of the Goods or completion of the Services is agreed by the Seller the Buyer shall, if required by the Seller, pay all costs and expenses but any Goods shall be held at the Buyer's risk as from the time of postponement.
- 7.3 The Seller shall be entitled to make delivery of the Goods or perform the Services by instalments and to invoice the Buyer for each instalment despatched or performed. Each delivery or performance shall constitute a separate Contract and failure by the Seller to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.4 If the Seller fails to deliver the Goods or perform the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods or services, to replace those not delivered or performed, over the Price.
- 7.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:-
- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price.
- 7.6 Where damage to or loss of the Goods occurs before delivery to the Buyer, or where there is a shortfall in delivery quantity, the Seller undertakes (subject as provided in condition 7.7) to re-supply, replace or (at its discretion) to repair free of charge any Goods so damaged or lost or otherwise not delivered, in which event the time for delivery of the damaged, lost or undelivered Goods shall be extended for such period as the Seller shall reasonably require for such re-supply, replacement or repair.
- 7.7 The undertaking in condition 7.6 is conditional upon:-
- (a) the Buyer giving written notice of any damage or loss caused in transit or shortfalls in quantity to the Seller and to the carrier (if other than the Seller) within 1 working day of receipt of the Goods or in the case of total loss within 5 days of receipt of the Seller's or the carrier's (as the case may be) delivery advice or other notification of despatch; and
 - (b) the Buyer (if requested by the Seller and at the Seller's cost) returning any damaged Goods to the Seller's works within 7 days of receipt.
- 7.8 Save as expressly provided in this condition 7, the Seller shall not have any liability whatsoever for, or in connection with, any damage to or loss of the Goods in transit to the contracted place of delivery.

8. ACCEPTANCE

- 8.1 The Buyer shall be deemed to have accepted the Goods and/or the Services as being in conformity with the Contract, and shall be bound to pay for them, unless written notice of rejection thereof is received by the Seller within 7 days of delivery.
- 8.2 Goods accepted by the Buyer cannot subsequently be returned and any claim which the Buyer might otherwise have shall be deemed to have been waived.
- 8.3 If after notice of rejection has been given the Buyer deals with the Goods as owner thereof, or if any conduct of the Buyer is inconsistent with such rejection or with the ownership of the Goods by the Seller, the Buyer shall be deemed to have accepted the Goods and be bound to pay for them.

9. RISK & TITLE

- 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 available for collection; or
 - (b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 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 then due.
- 9.3 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 insured 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.

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- 9.4 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.
- 9.5 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**
- 10.1 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.
- 10.2 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.
- 10.3 Subject to condition 10.1, the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, business, revenue or contract (whether direct or indirect) or for any other indirect or consequential loss arising under or in connection with the Contract.
- 10.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason 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**
- 11.1 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) offers to make any arrangements 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.
- 11.2 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**
- 12.1 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

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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).