

Print Asia Ltd.
CONDITIONS OF SUPPLY – GOODS AND SERVICES

1. INTERPRETATION

In these Conditions:-
“**Buyer**” means the person, firm or company placing an Order for Goods or Services with the Seller;
“**Conditions**” means the standard terms and conditions of sale set out in this document and includes any special conditions agreed in writing between the Buyer and the Seller;
“**Contract**” means an Order for Goods which, if accepted by the Seller, will together with these Conditions, form the contract;
“**Goods**” means the goods which are the subject of an Order;
“**Goods of Companies**” means the group of companies comprising the Buyer or the Seller (as the case may be) and all companies which are from time to time its subsidiaries, holding companies or subsidiaries of such holding companies (“subsidiary” and “holding company” to have the meaning ascribed thereto in Section 736 of the United Kingdom Companies Act 1985);
“**Order**” means an order placed by the Buyer on the Seller for the supply of Goods or Services (as amended from time to time in accordance with these Conditions);
“**Price**” means the price quoted by the Seller to the Buyer for the Goods or Services (as adjusted from time to time in accordance with these Conditions);
“**Schedule**” means any delivery schedule issued in relation to the delivery of Goods and/or Services;
“**Seller**” means the company which has provided a quote and/or upon which an Order is placed;
“**Services**” means the services (if any) which are the subject of an Order;
“**Specification**” means the specification and any additional drawings or information including artwork, paper, plates, or other materials relating to the Goods and/or Services provided to the Seller in writing at the time of the Seller’s quote as varied by any concessions agreed by the Seller and the Buyer in writing from time to time.

2. FORMATION OF CONTRACT

2.1 All quotations, offers and tenders are made and all Orders and Schedules are accepted by the Seller subject to these Conditions. Except as otherwise provided in these Conditions, all other terms, conditions or warranties are excluded from any contract between the Seller and the Buyer unless expressly accepted in writing by the Seller. For the avoidance of doubt, any conditions of purchase submitted at any time by the Buyer shall not apply to the Contract and any failure by the Seller to challenge any such conditions of purchase shall not imply acceptance by the Seller.

2.2 If there is a conflict between these Conditions and any other terms of the Seller’s quotation, offer, tender or acknowledgement of Order, such other terms shall prevail (to the extent of the conflict only).

2.3 Unless otherwise stated therein, all quotations given by the Seller shall be available for acceptance for a maximum period of 30 days from issue and may be withdrawn by the Seller at any time by written or oral notice.

2.4 If any statement or representation has been made to the Buyer by the Seller or its offers, employees or agents upon which the Buyer wishes to rely it shall only be entitled to do so if the Seller confirms in writing to the Buyer and the Buyer is entitled to rely on the statement or representation (any such confirmation to be signed by a director of the Seller).

2.5 Prices are quoted by the Seller on the basis of the exclusions and limitations of liability set out in these Conditions. If the Buyer wishes the Seller to consider accepting a higher limit of liability, the Buyer shall submit a written request to the Seller and the Seller may then quote a revised price taking into account of the increased risks accepted by the Seller and any increased insurance premium to be borne by the Seller. The Seller shall not be under any obligation to agree to any higher limitation of liability requested by the Buyer.

2.6 An Order or Schedule given by the Buyer is not binding on the Seller until accepted in writing or until the Seller makes delivery under that Order or Schedule (whichever occurs first).

3. PRICE

3.1 Unless otherwise agreed in writing, all Prices are quoted net exclusive of VAT and any other taxes, duties or levies payable in respect of the Goods and/or Services. If the Seller agrees to deliver the Goods otherwise than at its premises, the Buyer shall pay all packaging, transportation and insurance costs and other charges incurred by the Seller in making or arranging such delivery.

3.2 Where the Seller delivers or arranges delivery of the Goods, the Buyer shall be liable to the Seller for carriage costs and any demurrage costs incurred by the Seller if vehicles are unduly delayed at the place of delivery.

3.3 Notwithstanding Conditions 2.3 and 3.5 the Seller reserves the right to increase the Price at any time by giving the Buyer 14 days written notice in the event of any increases in the cost of labour, materials, overheads or changes in currency rates, alterations required by the Buyer after proofing, any alteration in or addition to the Buyer’s requirements including changes made by the Buyer when the style, type, stock, or layout is not specified, provision of copy by the Buyer which is not clear or legible, or any increase in (or new) tax, duties or levies (including VAT) imposed on the Goods or Services affecting the cost of supplying the Goods or performing the Services. If reasonably requested by the Buyer, the Seller will provide the Buyer with reasonable evidence of such increased costs (provided that the Seller shall not be obliged to provide information which would result in breaching any obligations of confidentiality with it owes to third parties).

3.4 Notwithstanding Conditions 2.3 and 3.5, the Seller shall be entitled at any time by giving the Buyer 14 days written notice to make reasonable adjustments to the Price in the event of any alteration in the quantity, design or Specification of the Goods and/or Services requested by the Buyer or any changes in the timescales for delivery of the Goods or performance of the Services requested by the Buyer, or which become necessary as a result of the acts or omissions of the Buyer or its servants or agents.

3.5 Without prejudice to Conditions 3.3 and 3.4, in the event that the Seller has agreed with the Buyer that the Price shall remain fixed for a certain period of time (“**Fixed Price Period**”), the Seller reserves the right at any time upon expiry of the Fixed Price Period to increase the Price. The Seller shall give to the Buyer 30 day’s written notice of any such increases in Price.

4. PAYMENT

4.1 The Seller shall (subject to Condition 4.6) be entitled to submit its invoice upon delivery of the Goods or performance of the Services or at any time afterwards except that where delivery has been postponed at the request of or by the default of the Buyer, the Seller

may submit its invoice at any time after the Goods are ready for delivery or the Services are ready to be performed or would have been ready in the ordinary course but for the Buyer’s request or default.

4.2 Where Goods are delivered by instalments or Services are to be performed in instalments the Seller may invoice each instalment separately and the Buyer shall such invoices in accordance with these Conditions.

4.3 Subject to Condition 4.6, all invoices shall be due and payable in full in cleared funds within 30 days of the invoice date. The currency of payment shall be that stated in the invoice.

4.4 The Buyer shall not be entitled to make any withholdings or deductions from amounts due to the Seller or exercise any rights of set-off. In the event that the Buyer disputes any amounts due under an invoice, the Buyer shall be entitled to withhold payment of the specific amount in dispute only provided that the Buyer has notified the Seller in writing within 7 days of the date of the Seller’s invoice and such notification sets out in detail the nature of the Buyer’s dispute. The Seller will then investigate the dispute and the Buyer and the Seller will work together to seek to resolve the dispute promptly. In the event that the Buyer seeks to withhold payment of amounts which are not notified to the Seller in accordance with this Condition, the Seller reserves the right to exercise its rights under Condition 4.5 below.

4.5 If the Buyer fails to make any payments by the due date, the Seller shall be entitled, without prejudice to any other right or remedy, to do all or any of the following:-

4.5.1 to suspend any or all further deliveries and suspend any further production or works or the performance of the Services (including suspending any procurement activities related to the Goods or Services) under the Contract and under any other contract or contracts in existence between the Seller and Buyer without notice;

4.5.2 to charge interest on any amount outstanding at the rate of 8% per annum above the Bank of England base rate, such interest being charged as a separate, continuing obligation not merging with any judgment together with any statutory debt recover costs;

4.5.3 to serve notice on the Buyer requiring immediate payment for all Goods and Services supplied by the Seller under this and all other contracts with the Buyer whether or not payment is otherwise due;

4.5.4 to sue for all outstanding amounts (regardless of whether title in the Goods has passed to the Buyer).

4.6 For supplies to a Buyer outside the jurisdiction in which the Seller is incorporated, the Seller shall be entitled to require that payment is made by irrevocable letter of credit confirmed with a UK clearing bank approved by the Seller prior to the date of delivery of Goods or performance of Services.

5. DELIVERY

5.1 Delivery of the Goods shall be made by release of the Goods by the Seller to a carrier to be selected by the Seller for delivery to the Buyer regardless of whether the Seller has specifically agreed in writing to arrange transport for the Goods.

5.2 The Seller will seek to achieve any agreed times for delivery of Goods and performance of Services but all such delivery and performance times are not guaranteed. The Buyer shall have no right to damages or to cancel the Contract for any failure to meet any delivery or performance time stated nor shall the Buyer be entitled to make, or to purport to make, time for delivery or performance of the essence of the contract.

5.3 The date of delivery of Goods and performance of Services shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Buyer and in the event of the Buyer delaying in providing any such information, instructions and approvals, the time for delivery shall be extended accordingly.

5.4 The Seller may deliver Goods and perform Services in instalments in which case each instalment (or each delivery under a Schedule) shall be treated as a separate Contract governed by these Conditions. No delay in the delivery of any instalment of Goods (or any delivery under a Schedule) or any defect therein nor any delay in performance of Services shall entitle the Buyer to terminate the remaining Contract.

5.5 The Seller will endeavour to comply with any reasonable requests by the Buyer for postponement of delivery of the Goods or performance of the Services but shall be under no obligation to do so. Where delivery of the Goods or performance of Services is postponed, other than due to default by the Seller, then without prejudice to all other rights and remedies available to the Seller, the Buyer shall pay all costs and expenses incurred by the Seller as a result of any such delays.

5.6 The Seller shall not be obliged to give notice to the Buyer to enable the Buyer to insure the Goods during transit. Release of the Goods by the Seller to a carrier to be selected by the Seller shall constitute delivery to the Buyer and the Seller shall not be required to make any contract with the carrier on behalf of the Buyer. The Seller shall not be responsible for any loss or damage to the Goods in the course of transit.

5.7 The Seller shall not be liable for any non-delivery of Goods or shortages in deliveries of Goods (howsoever caused) unless written notice is given by the Buyer to the Seller and where applicable, the carrier, within 7 days of the date when the Goods would, in the ordinary course of events, have been received.

5.8 Any liability of the Seller for any shortages in delivery or any non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note in respect of the non-delivered Goods or the shortfall in the delivery of the Goods.

5.9 The Buyer shall be responsible for obtaining all export and import licences (including payment of any duties) for the Goods and shall be responsible for any delays due to such licences not being available when required.

6. RISK AND TITLE

6.1 Risk shall pass to the Buyer (so that the Buyer is responsible for all loss, damage or deterioration of the Goods) at the time when the Goods are released by the Seller to a carrier to be selected by the Seller for delivery to the Buyer or would, had the Buyer (or its carrier) collected the Goods on the correct date, have been released by the Buyer.

6.2 Title to the Goods shall only pass to the Buyer if the Buyer has paid to the Seller all sums (including any default interest) due from it to the Seller (a) under all Contracts between the Seller and the Buyer (including any sums due under contracts made after the Contract) whether or not the same are immediately payable and (b) under all contracts between the Seller and any company within the same Group of Companies as the Buyer.

6.3 The Seller may recover Goods in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licences the Seller, its officers, employees and agents to enter upon any premises of the Buyer, with or without vehicles, for the purpose of either of satisfying itself that Condition 6.4 below is being complied with by the

Buyer or of recovering any Goods in respect of which title has not passed to the Buyer.

6.4 Until title to the Goods has passed to the Buyer under these Conditions, the Buyer shall possess the Goods as fiduciary agent and bailee of the Seller. The Buyer shall store the Goods separately from other Goods and shall ensure that they are clearly identifiable as belonging to the Seller. Nothing in this Condition 6 shall be construed as preventing the Buyer from dealing with the Goods in the ordinary course of its business.

7. CANCELLATION

7.1 The Seller shall not be obliged to accept any cancellation of Orders by the Buyer. If the Seller exercises its discretion to accept any such cancellation, it will only do so on the condition that all costs and expenses incurred by the Seller up to the time of cancellation and all loss of profits and other loss or damage suffered by the Seller by reason of such cancellation will be paid immediately by the Buyer to the Seller.

7.2 Goods returned to the Seller without the Seller’s prior written consent will not be accepted for credit.

8. VARIATIONS

8.1 No variations to the Goods or Services required by the Buyer shall be binding on the Seller unless agreed by the Seller and the Buyer in writing, including, as part of such agreement, any change to the Price arising in consequence of the variation to the Goods or Services. If the Seller and the Buyer are unable to agree the consequential change in the Price, the Price shall be varied by reference to the extra costs incurred by the Seller in making the variation plus an appropriate profit margin.

8.2 If the Seller agrees to any such variation, any dates quoted for delivery of Goods or performance of the Services shall be extended accordingly.

8.3 The Seller reserves the right to deliver under or over the quantity of Goods ordered by up to 5% and the Buyer shall pay the quantity actually delivered.

9. SPECIFICATIONS, INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

9.1 The Buyer shall be solely responsible for ensuring that the Specification and all drawings, information, advice and recommendations given to the Seller, either directly or indirectly by the Buyer, are accurate, correct and suitable for the Goods or Services (as the case may be). Examination or consideration by the Seller of the Specification and any such drawings, information advice or recommendation shall not limit the Buyer’s responsibility.

9.2 The Specification and all intellectual property rights therein shall vest in the providing party. For the avoidance of doubt, all know-how and intellectual property in the manufacturing process, the sourcing of any materials or services (except where such materials and/or manufacturing process or service are supplied, specified or approved by the Buyer) shall belong to the Seller and shall remain the Seller’s sole and exclusive property.

9.3 Any illustrations, performance details, examples of installations and methods of assembly and all other data (including data in machine readable format) provided by the Seller is provided for general guidance only. No such information or data shall form part of the Contract and the Seller shall have no liability whatsoever for any such information and data provided to the Buyer.

9.4 All drawings, documents, confidential records, computer software and other information supplied by or on behalf of the Seller are supplied on the express understanding that all intellectual property rights (including, but not limited to, copyright) is reserved to the Seller (or the third party) and that the Buyer shall not, without the prior written consent of the Seller, disclose, give away, loan or sell any drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the Goods in respect of which they are issued.

9.5 If any allegation is made against the Seller to the effect that the supply of the Goods or the performance of any Services or any drawings, designs or Specifications supplied by the Buyer infringes the intellectual property rights of any third party or the Seller has reason to believe that any such allegation is likely to be made, the Buyer shall indemnify the Seller and keep the Seller fully and effectively indemnified from and against all claims, liabilities, damages, losses, costs and expenses suffered or incurred by the Seller as a result of any such claim or allegation.

9.6 The printing process is not precise. The Seller will use reasonable commercial endeavours to ensure as close a match as possible with any proofs, but shall have no liability in respect of variation of colour and/or quality of print where such variation falls within the tolerance range accepted within the printing industry and/or the restrictions of the chosen printing process.

9.7 The Seller cannot be held liable for failure to perform the contract if this should be caused by extraordinary processing problems or processing problems that could not reasonably be foreseen by the Seller.

9.8 The Seller shall not guarantee characteristics, such as storage life, adherence, gloss, colour, light or colour fastness or wear-resistance if the Buyer has failed to give information as to what standards and/or characteristics have to apply.

10. QUALITY AND LIABILITY

10.1 The Seller warrants that, the Goods will:-
10.1.1 be free from defects as a result of faulty workmanship;
10.1.2 comply, in all material aspects, with the Specification where practical;

10.2 The Seller warrants that the Services will:-
10.2.1 be performed with reasonable skill and care;
10.2.2 be performed in all material respects in accordance with Specification;

10.3 The Seller shall not be liable for a breach of the warranties in Conditions 10.1 and 10.2 unless:-

10.3.1 the Buyer gives written notice of the defect in the Goods or failure in the Services to the Seller (and in the case of Goods, if the defect is as a result of damage in transit, to the carrier), within 7 days of:-

(a) the date of delivery of the Goods or performance of the Services (where the defect would be apparent to the Buyer upon a reasonable inspection); or

(b) the date when the Buyer knew or ought reasonably to have known of the defect in the Goods or failure in the Services (where the defect or failure would not be apparent to the Buyer upon a reasonable inspection); and

(c) the Seller is given a reasonable opportunity after receiving the notice to examine such Goods or Services and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller for the examination to take place.

10.4 The Seller shall not be liable for a breach of the warranty in Condition 10.1 if:-

10.4.1 the defect in Goods or in failure in Services arises because the Buyer failed to allow the Seller’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Services or (if there are none) good trade practice; or

10.4.2 the Buyer alters or repairs such Goods or Services without the prior written consent of the Seller; or

10.4.3 the defect in the Goods or the failure in the Services arises from any design defect in any drawing, design, materials or Specification or any defects in material supplied or approved by the Buyer or the defect in the Goods or the failure in the Services arises from any incompatibility of the Specification with the manufacturing processes or materials used by the Seller.

10.5 If the Buyer makes a valid claim against the Seller based on a defect in the quality of the Goods or failure in the Services, the Seller shall, at its option, repair or replace such Goods (or the defective part) or, in the case of Services, make good the Services or refund the Price of the Goods or Services in question.

10.6 If the Seller complies with Condition 10.5 it shall have no further liability for a breach of the warranty in Conditions 10.1 and 10.2 in respect of the quality of the Goods or Services.

10.7 Any Goods replaced will belong to the Seller.

10.8 The obligations stated above represent the Seller’s quality commitments. Any terms which may otherwise be implied by statute or common law as to description, quality or fitness for purpose of the Goods or Services are excluded to the fullest extent permitted by law.

10.9 The Seller does not exclude liability arising under Section 12 Sale of Goods Act 1979 for death or personal injury caused by its negligence or for fraudulent misrepresentation.

10.10 Notwithstanding any other provision of these Conditions but without prejudice to Condition 10.9, the Seller shall not have any liability whatsoever and whether arising in contract, tort (including negligence), breach of statutory duty or otherwise for any:-

10.10.1 loss of profit;
10.10.2 loss of anticipated savings;
10.10.3 loss of business;

10.10.4 loss or damage to goodwill;
10.10.5 increased production costs;

10.10.6 any costs or work related to the removal of defective Goods or Services and the installation of repaired or replacement Goods or performance of replacement Services;

10.10.7 any indirect, special or consequential losses or damages.

10.11 Without prejudice to Conditions 10.9 and 10.10, the Seller’s maximum total liability to the Buyer, whether in respect of one claim or a series of related claims and whether arising in contract, tort (including but not limited to negligence), breach of statutory duty or otherwise, shall not exceed an amount equal to the Price paid for the Goods or Services (as the case may be) giving rise to the claim.

11. TERMINATION

11.1 The Seller shall (without prejudice to any rights or remedies available to the Seller) be entitled to terminate a Contract without liability if:-

11.1.1 if the Buyer or any member of the Buyer’s Group of Companies becomes bankrupt or shall be deemed to be unable to pay its debts for the purposes of Section 123 of the United Kingdom Insolvency Act 1986 or shall enter into an arrangement with its creditors or if a resolution shall be passed or proceedings shall be commenced for the administration or liquidation of the Buyer or any member of the Buyer’s Group of Companies (other than for a voluntary solvent winding up for the purposes reconstruction or amalgamation), or if a receiver or manager shall be appointed of all or any part of the Buyer’s Group of Companies, or if anything analogous to the foregoing occurs under the laws of any jurisdiction or if the Seller reasonably anticipates that any of the foregoing events are likely to occur;

11.1.2 if the Buyer commits or allows to be committed any breach of the Contract.

11.2 In the event of termination (howsoever arising) all amounts owing to the Seller shall become immediately due and payable including, for the avoidance of doubt, the Price for all Goods and Services supplied and all un-recovered investments and commitments notified to the Buyer pursuant to Condition 2.8.

12. EXCUSABLE DELAYS

The Seller shall be under no liability for any failure to perform any of its obligations under the Contract if the failure is caused by the occurrence of any events outside of its reasonable control including, but limited to, any acts of God, acts of terrorism, governmental restriction, condition or control or by reason of any act or omission of the Seller’s suppliers and sub-contractors or by reason of any act done or not done pursuant to a trade dispute, shortages of labour or materials or breakdown machinery.

13. GENERAL

13.1 The Buyer shall not be entitled to assign the benefit or burden of any Contract without the prior written consent of the Seller.

13.2 If any provision of these Conditions shall be held valid or unenforceable in whole or in part, then the unaffected provisions shall remain in full force and effect.

13.3 No waiver of or delay or failure by the Seller to exercise any rights or remedies shall prejudice any future or further exercise thereof.

13.4 The Buyer shall keep as confidential all information disclosed to it by or on behalf of the Seller which could reasonably be considered as confidential. This shall include, but not be limited to, all information disclosed by the Seller which relates to manufacturing processes and know-how, sourcing information (both materials and suppliers of services) and all information relating to the Seller’s business which is not in the public domain. The Buyer shall not use any information so provided other than to enable it to perform its obligations under the Contract. All such information (and all copies thereof) shall be immediately returned to the Seller upon termination of the Contract.

13.5 A person who is not a party to the Contract (“a third party”) shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the “Act”) to enforce any Contract.

13.6 All notices to be served by the Buyer on the Seller only be valid if addressed to the Managing Director of the Seller.

13.7 The Buyer shall not be entitled to hold itself as an agent or representative of the Seller nor shall the Buyer be entitled, in any way, to bind the Seller without the prior written consent of the Seller (any such consent to be signed by a director of the Seller).

13.8 The Contract shall be governed by English law and the English courts shall have exclusive jurisdiction to deal with any disputes between the Buyer and the Seller. For the avoidance of doubt, the application of the United Nations Conventions for the International Sale of Goods is hereby expressly excluded.