



SYMBIAN PRINT

Terms and conditions of
purchase for the supply of
print goods and services



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1. Introduction

1.1 The terms set out in this Agreement between Symbian Print Intelligence Limited (the "Customer") and the person, firm or company (the "Supplier") supplying the Customer with the goods ("Goods") and/or services ("Services") as specified in the Order and accepted by the Supplier, shall govern where the Customer agrees to purchase the Goods and/or Services as detailed in the Order from the Supplier. The Customer shall not purchase Goods and/or Services under any other terms other than those set out under this Agreement.

1.2 Each order for Goods and/or Services sent to the Supplier by the Customer (the "Order") and accepted by the Supplier will form a separate contract entered into under these terms and conditions ("Contract").

1.3 No variation or addition to these terms will form part of this Agreement unless made or specifically accepted by the Customer in writing. These terms and conditions will override and take the place of any other terms and conditions contained in any document or other communication used by the Supplier including without limitation any quotation given to the Customer or subject to which an Order is accepted or purported to be accepted by the Supplier.

2 Payment

2.1 The price for the Goods and/or Services as set out in the Order is fixed and exclusive of VAT (subject to the receipt of a valid VAT invoice) but inclusive of all other levies, duties, taxes, charges and expenses (including packaging, carriage and insurance). The price is inclusive of delivery to the place at which the Goods are to be delivered or performance of the work at the place at which the Services are to be performed (the "Location") as specified in the Order or which may be advised to the Supplier from time to time. No increase in the price may be made without prior consent of the Customer in writing. The Customer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier whether or not shown on its terms and conditions of sale.

2.2 The Supplier will invoice the Customer for the Goods and/or Services (quoting the number of the Order and the job number) at any time after the later of the due date for completion of the supply of the Goods and/or Services and the actual date of such completion and payment shall, unless otherwise agreed be made within sixty (60) days from the end of the month of receipt of invoice or if later, after acceptance of the Goods and/or Services. The Customer shall be entitled but not obliged at any time or times without notice to the Supplier to set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated). Any exercise by the Customer of its rights under this clause shall be without prejudice to any other rights or remedies available to the Customer under this Agreement or otherwise.

3 Delivery

3.1 The Goods and/or Services shall be provided in the quantities, by the times and at the Location strictly in accordance with the Order or otherwise agreed by the Customer in writing and the Customer shall not be obliged to accept any incomplete delivery of the Goods, any Goods in excess of the amounts ordered or any deficient performance of the Services. Unless otherwise specified or agreed, deliveries shall be made between 9am and 5pm on normal business weekdays. The Supplier shall be responsible for providing an advice note and a proof of delivery. If the supply of Goods and/or Services requires the carrying out of tests or the instalment of the Goods, after receipt by the Customer, delivery shall not be deemed to be complete until such tests have been passed or the Goods have been installed to the Customer's unconditional satisfaction and the Supplier shall provide the Customer upon request with copies of all test reports and all data discovered as a result of testing.

3.2 Time for provision of the Goods and/or Services shall be of the essence. The Supplier shall notify the Customer if any delivery or performance is likely to be delayed beyond the specified date. Failure by the Supplier to notify any likely delay shall entitle the Customer to terminate without liability for all or part of the Contract and/or to compensation for any losses resulting from such failure and delay. If any delay so notified does or is likely to exceed 30 days, the Customer shall be entitled to terminate without liability on the Customer's part for all or part of the Con-

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tract and/or (unless the delay is due to Force Majeure) to compensation for any resulting losses.

3.3 In addition to any other right the Customer may have under this Agreement or any other contract between the Customer and the Supplier, the Customer shall be entitled to postpone the date of delivery for whatever period the Customer thinks fit upon giving notice in writing to the Supplier provided that the Customer pays the Supplier the Supplier's reasonable additional charges as in the circumstances the Customer shall in its reasonable discretion think fit.

3.4 The Supplier must ensure all Goods delivered are suitably packaged. This will include but not be limited to ensuring that only blank labels or labels headed with the name "Symbian Print Intelligence Limited" shall appear on each package. The Supplier's name, mark, reference number, imprint, transfer, nameplate and the suchlike, shall not appear on the Goods, packing, cases, advice notes or on any proof of delivery documentation without the prior written permission of the Customer. The Customer shall not be obliged to return any packaging materials for any Goods whether or not they are accepted by the Customer.

3.5 If the Goods are delivered or the Services are performed in instalments, the Agreement shall be treated as a single contract and not severable.

3.6 The Supplier shall provide to the Customer access to the Goods and/or Services at all key stages in their development. The Supplier shall not depart from the Order for the Goods and/or Services unless the Supplier has obtained the Customer's written approval. The Supplier shall make all and any amendments to the Goods and/or Services required by the Customer and unless agreed in writing by the Customer, any such amendments shall not increase the price.

3.7 If an inspection at any time after delivery by the Customer establishes that all or any part of the Goods and/or Services supplied do not comply with all the requirements of these terms and conditions the Customer may (without limitation) reject the Goods and/or Services supplied, may return the Goods to the Supplier and may require replacement or rectification of the Goods, or require reperformance of the Services and in each case recover its loss, costs and expenses from the Supplier. The Customer shall not be deemed to have accepted any Goods and/or Services provided until the Customer has had a reasonable time to inspect the Goods and/or Services following delivery or, if later, within a reasonable time after any latent defect in the Goods has been apparent.

3.8 If the Customer installs any Goods supplied to it, the Supplier shall supply in advance of delivery a functional description of each part of the Goods, together with sufficient drawings and instructions to allow the Customer to install, operate and maintain the Goods including details of any special environmental controls required to ensure that the Goods meet any relevant specification.

3.9 The Supplier shall remit a certificate of conformance with any relevant specification confirming conformance with all appropriate regulatory approvals and health and safety requirements.

3.10 The Supplier shall meet any service levels or key performance indicators ("KPI's") and pay any associated service credits as may be agreed between the Customer and the Supplier from time to time.

4 Variations

4.1 The Supplier shall accept any reasonable variation in scope, specification, quantity or delivery in relation to the Goods and/or Services requested by the Customer. The price shall be adjusted and agreed in writing by the Customer to reflect the variation having regard to the rates and prices used in the contract or, where these are not relevant, to what is fair and reasonable.

4.2 Neither party shall be bound by any variation to the Order unless and until it is confirmed by an official Order amendment issued by the Customer.



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5 Title and Risk

5.1 The risk in any Goods shall pass to the Customer when delivered in accordance with the terms of the Order provided delivery is acknowledged by an authorised member of the Customer's staff. Title to any Goods shall pass to the Customer upon delivery unless it has been agreed that the Goods are paid for in advance, in which case title shall pass immediately once payment has been made by the Customer and the Goods have been allocated to the Order.

5.2 The Supplier shall be responsible for all materials supplied to it by the Customer in connection with the Order from the date of their delivery to the Supplier until they are received back by the Customer. The Supplier shall, at its own expense, replace or reinstate any such materials which are lost or damaged.

6 Intellectual Property

6.1 Subject to the rights of the Supplier and/or its third party licensors in respect of any pre-existing materials which are supplied in conjunction with the Goods and/or Services (which shall remain unaffected), all intellectual property rights (including without limitation in any specifications, plans, drawings, photographs, data, designs, works, proofs or samples conventional and digital artwork or other processes), which are produced, created or supplied by either the Customer or the Supplier under or in connection with any Order shall be and shall become the Customer's exclusive property with effect from its production, creation or supply and the Customer shall have full and free right to use those intellectual property rights and any matters to which they relate as the Customer sees fit. The Supplier:

(i) hereby assigns with full title guarantee to the Customer absolutely the entire right, title and interest in such intellectual property rights, the common law rights thereto and the right to apply for registration therefor and shall do all such things and execute such further documents as may be necessary or desirable to give effect to the terms of this Agreement;

(ii) may use such intellectual property rights only as properly and reasonably required in connection with the supply of the Goods and/or Services for the Customer;

(iii) irrevocably and unconditionally waives all moral rights in such intellectual property rights and will take all necessary steps, at the Supplier's cost, to ensure that all such rights are irrevocably waived in writing in favour of the Customer.

6.2 The Supplier grants the Customer a non-exclusive, worldwide, perpetual, transferable, royalty-free licence (including the ability to grant sub-licences) in respect of all intellectual property rights (including without limitation copyright in any software) in the Goods and/or Services and which do not belong to the Customer under this Clause 6.

6.3 The Supplier shall and shall procure that its agents, employees and sub-contractors shall execute any documents or do anything else reasonably required by the Customer to obtain, maintain, defend, enforce and secure full and free right to use those intellectual property rights referred to in clause 6.1 and to secure the licences referred to in clause 6.2.

6.4 The Supplier will indemnify and hold the Customer harmless against any damages (including costs) that may be awarded or agreed to be paid in respect of any claim or action that any Goods and/or Services supplied by the Supplier infringe any patent, copyright, registered design, trade secret, trade mark or any other proprietary right of a third party anywhere in the world (except to the extent that the claim is due directly to compliance with any Customer specification).

7 Hazardous Goods

7.1 If any Goods to be supplied under any Order contain any hazardous substances or require any special precautions to be taken to ensure safety in handling, transport, storage or use, the Supplier shall prior to delivery furnish

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the Customer with written details of the nature of those substances and the precautions to be taken and shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked or securely attached to any containers into which they are packed.

8 Warranties

8.1 The Supplier warrants that all of the Goods supplied by it will be:

- (i) of satisfactory quality, in full accordance with any specification in the Order or which the Customer may provide the Supplier with from time to time and will be fit for any purpose stated by the Customer prior to or in the Order or held out by the Supplier; and
- (ii) free from all defects in design, material and workmanship.

8.2 The Supplier warrants that any Services supplied by it will be performed by appropriately qualified and trained personnel with all due skill, care and diligence and to such high standards of quality stated in the Order or (if none are so stated) as it is reasonable for the Customer to expect.

8.3 The Supplier warrants that the Goods and/or Services will:

- (i) comply with all applicable laws, standards, codes of practice (whether voluntary or mandatory), statutory requirements or other regulations;
- (ii) not infringe any intellectual property rights or other rights of any third party anywhere in the world; and
- (iii) will correspond with any specifications and/or samples.

9 Indemnity

9.1 The Supplier shall indemnify the Customer for:

- (i) all loss, liability, damage, cost, claims or expense (including legal expenses) suffered by the Customer because of any breach of the Order by the Supplier, these terms and conditions or any representation, warranty or condition (express or implied) given by the Supplier;
- (ii) any act or omission of the Supplier (including the Supplier's employees, agents and sub-contractors) in supplying the Goods and/or Services; and
- (iii) any liability which the Customer may incur whether by court proceedings or by a bona fide out-of-court settlement as a result of a claim against it under the Consumer Protection Act 1987 in respect of an alleged defect in the Goods and/or Services.

9.2 The Supplier shall not be liable to the Customer for any damage or injury to the extent that the same is caused by or arises out of the Customer's negligent acts or omissions.

10 Insurance

10.1 The Supplier shall maintain with an insurance company of good repute insurance (including product liability and/or professional indemnity insurance where appropriate) providing cover consistent at least with the best industry practice of suppliers of goods and/or services of the type to be supplied by the Supplier to the Customer and in an amount of not less than the higher of £250,000 or the total Order value for any claim or series of related claims and on the reasonable written request by the Customer provide evidence that such insurances are in place and that any premiums payable thereunder are fully paid to date .



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11 Cancellation

11.1 The Customer may terminate all or any part of the Order without any liability immediately by notice to the Supplier, and without limitation in the following circumstances if the Supplier:

- (i) breaches any term of the Order and (where in the Customer's reasonable opinion the breach can be remedied without any delay to the time for supply under Clause 3) fails to remedy the breach by that time for supply or (if earlier) within seven (7) days of the Customer so requiring; or
- (ii) ceases to or threatens to cease to carry on business, has a receiver or administrative receiver appointed over all or part of its assets, compounds with its creditors, becomes subject to an administration order or a bankruptcy order or goes into liquidation or suffers similar proceedings under any competent jurisdiction.

11.2 Notwithstanding clause 11.1, the Customer may cancel all or any part of the Order at any time up to the time of despatch of the Goods or commencement of the Services at its sole discretion in which case its only liability will be to pay the order price less the Supplier's net savings of costs resulting from the cancellation.

11.3 Clauses 6, 8, 9, 10, 12, 13, 14 and 16 shall survive termination or completion of all or any Order.

11.4 If this Agreement is terminated for any reason:

- (i) it shall not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination;
- (ii) the Customer shall be entitled to recover any materials or specifications from the Supplier's premises that had been delivered to or produced by the Supplier for the purpose of manufacturing the Goods or any parts thereof or carrying out any Services to be delivered and any Goods produced by the Supplier but then undelivered subject to the Customer paying a reasonable price therefor.

12 Confidentiality

12.1 The Supplier shall keep confidential and not use except for any of the Customer's Orders all confidential information obtained by the Supplier in connection with the Order. The Supplier shall inform its employees, agents and sub-contractors of the requirement of confidentiality and indemnify the Customer against any unauthorised use or disclosure by any of them of such confidential information. Confidential information includes information about the business, finances or affairs of both the Customer and its customers. These confidentiality obligations shall survive the termination (whether by the Customer or the Supplier) of this Agreement or the completion of any Order but shall not apply to information in the public domain at the time of its disclosure or use other than as a result of breach of this term.

13 Non-Solicitation and Non-Compete

13.1 During the term of this Agreement and for a period of one (1) year after its termination (whether by the Customer or by the Supplier), neither the Supplier nor any subsidiary or associated company of the Supplier shall:

- (i) approach any client of the Customer to whom any Order during the term of this Agreement related and offer to supply or otherwise solicit business from that customer for goods of the type, style or nature for which the Customer placed the Order; or
- (ii) enter into any contract to manufacture for or supply to such customer goods of that type, style or nature if any individual who is, or was within the period of one (1) year prior to that contract, an employee of the Customer or has any interest in that contract or in any associated arrangements; or

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(iii) directly or indirectly, employ or offer to employ any servant or agent of the Customer.

14 Data Protection

14.1 In this clause terms and expressions defined in the Data Protection Act 1998 and used in this clause shall have the same meaning given to them in that Act. The Supplier agrees that it shall and shall procure that its employees, agents and sub-contractors shall, at all times, comply with the provisions of the Data Protection Act 1998 in relation to data received from the Customer under this Agreement and that it shall only process personal data so received in accordance with the instructions of the Customer. The Supplier agrees that it shall not transfer personal data outside the European Union without the prior written consent of the Customer.

14.2 The Supplier indemnifies the Customer against all costs, legal costs, claims, damages, demands and all other expenses arising out of any breach of clause 14.1 above.

15 Force Majeure

15.1 The Customer shall have no liability to the Supplier, or be deemed to be in breach of this Agreement, as a consequence of any of the following events, where the event is outside the Customer's reasonable control:

- (i) flood, storm, severe weather conditions or other natural events;
- (ii) war, terrorist action, hostilities, revolution, riot or civil disorder;
- (iii) any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, materials (including any computer hardware or software or any records) unless by an act or omission of the Customer's employees, agents or sub-contractors;
- (iv) the introduction of, or any amendment to, a law or regulation, or any change in the interpretation or application by any authority;
- (v) any strike, lockout or other industrial action;
- (vi) any obstruction of any public or private highway or road or any event which prevents or obstructs access to the Location;
- (vii) any breach of contract or default by, or insolvency of a third party (including an agent or sub-contractor);
- (viii) or any other event outside the Customer's reasonable control, whether similar or not to any of the foregoing.

16 General

16.1 The Customer engages the Supplier as an independent contractor. Nothing in this Agreement shall create a partnership or the relationship of principal and agent or employer and employee.

16.2 If any provision of this Agreement is found by any court or administrative body or competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this Agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.

16.3 A waiver of the Customer's rights shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, power or remedy available to that party and the rights, powers and remedies shall be cumulative.



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16.4 The Supplier shall not transfer this Agreement or any of its rights, liabilities or obligations nor shall the Supplier sub-contract any of its obligations under it, whether in whole or in part, without first obtaining the Customer's prior written consent. Such consent, if granted, shall not release the Supplier from any of its obligations and liabilities which may exist under this Agreement from time to time.

16.5 All notices which are required to be given under this Agreement shall be in writing and shall be sent:

- (i) in the case of the Customer to its registered office;
- (ii) in the case of the Supplier to its registered office; or
- (iii) to such other address as the recipient may designate by notice given in accordance with the provisions of this clause.

Notices should be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post forty-eight (48) hours after posting and if by facsimile transmission when despatched.

16.6 Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of this agreement.

16.8 The Supplier shall allow the Customer's officers or agents at all reasonable times upon reasonable prior notice to the Supplier's premises to review the production of the Goods and/or performance of the Services and/or the Supplier's conformance with these terms and conditions.

16.9 For the purposes of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of this Agreement to be enforced by third parties.

16.10 This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

[END]