



**SYMBIAN PRINT**

Terms and conditions of business



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## 1. Interpretation

1.1 - In these conditions: "BUYER" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller "GOODS" means the printed matter and materials and services relating to its production (including any instalment of the printed matter or any part of it), which the Seller is to supply in accordance with these conditions "SELLER" means SYMBIAN PRINT INTELLIGENCE LIMITED (registered in England under the number 3901763) "CONDITIONS" means the standard terms of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller "CONTRACT" means the contract for the purchase and sale of the Goods "WRITING" includes telex, cable, facsimile transmission, and comparable means of communication.

1.2 - Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 - The headings in these conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of the sale

2.1 - The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order by the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 - No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 - The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 - Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3. Orders and specifications

3.1 - No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 - The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including all text artwork or other material) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 - Proofs of all work may be submitted by the Seller to the Buyer for approval and the Seller shall not be responsible for any errors deriving from proofs passed by the Buyer.

3.4 - 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 patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person or any illegal or libellous matter which results from the production or supply of the Goods.

3.5 - No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in

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Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4 Price of the goods

4.1 - The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 - The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the cost of labour, materials or other costs of production), any change in delivery dates, quantities, text or artwork for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 - Except as otherwise stated under the terms of any quotation and unless otherwise agreed in Writing the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than to the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance. The Buyer must specify any particular insurance requirements it may have.

4.4 - The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 - The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## 5 Terms of payment

5.1 - Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless they are collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 - The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 - If the Buyer fails to make any payment on the due date in respect of the Goods or in respect of goods supplied under any other contract between the Buyer and the Seller then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 - cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 - appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);and

5.3.3 - charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of



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2 per cent over Barclays business loanrate per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

### 6 Delivery

6.1 - Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises or at the premises of the Seller's sub-contractors at any time after the Buyer has been notified 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.

6.2 - Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 - Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to ten per cent less than the total quantity ordered (including any version changes) without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

6.4 - Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver 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.

6.5 - the Seller fails to deliver the Goods (or any instalment) 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 to replace those not delivered over the price of the Goods.

6.6 - 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 (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.6.1 - store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 - sell the Goods at the best readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

### Risk and property

7.1 - Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 - in the case of the Goods to be delivered at the Seller's premises or at the premises of the Seller's sub-contractors, at the time when the Buyer is notified that the Goods are available for collection; or

7.1.2 - 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.

7.2 - 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 cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

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7.3 - 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, but shall be entitled to resell or use the Goods in the ordinary course of business.

7.4 - 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.

7.5 - 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 all moneys owing by the Buyer to the Seller shall (without prejudice to any right or remedy of the Seller) forthwith become due and payable.

7.6 - The Seller in respect of all unpaid debts due from the Buyer have a general lien on all goods and property in its hands and shall be entitled on the expiration of 10 days notice to dispose of such goods and property as it thinks fit to apply the proceeds towards such debts.

## 8 Warranties and liability

8.1 - Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery

8.2 - The above warranty is given by the Seller subject to the following conditions:

8.2.1 - the Seller shall be under no liability in respect of any defect in the Goods arising from any text art work or specification supplied by the Buyer;

8.2.2 - the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.3 - the above warranty does not extend to materials not manufactured or produced by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or producer to the Seller.

8.3 - Subject as expressly provided these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common laws are excluded to the fullest extent permitted by law.

8.4 - Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions.

8.5 - Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (in case of delivery by instalments the date of the first instalment) or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect of failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price of the Goods had been delivered in accordance with the Contract.

8.6 - Where any valid claim in respect of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or as proportionate part of the price), but the Seller shall have no further liability to the Buyer.



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8.7 - Except in respect of death or personal injury caused by the seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

8.8 - The Seller shall not be liable to the Buyer or to 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, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.8.1 - Act of God, explosion, flood, tempest, fire or accident;

8.8.2 - war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3 - acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on part of any governmental, parliamentary or local authority;

8.8.4 - import or export regulations or embargoes;

8.8.5 - strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6 - difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7 - power failure or breakdown in machinery.

8.8.8 - the Seller's supplier or associated third party has a bankruptcy order made against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of their assets or takes or suffers any similar action in consequence of debt or becomes insolvent

### 9 Insolvency of buyer

9.1 - This clause applies if:

9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 - an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3 - the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 - the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 - If this clause applies then, without prejudice to any other right of remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable

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notwithstanding any previous agreement or arrangement to the contrary.

## 10 Periodical publications

10.1 - A contract for the printing of a periodical publication (defined as a production which occurs more than three times in a twelve month period) may not be terminated by either party unless 13 weeks notice in writing is given in the case of periodicals produced monthly or more frequently or 26 weeks' notice in writing is given in the case of other periodicals. Notice may be given at any time but whenever possible should be given after completion of work on any one issue. Nevertheless the Seller may terminate any such contract forthwith should any sum due thereunder remain unpaid or if the Buyer is in breach of any its obligations arising under the contract.

10.2 - In the event of such notice being given by the Buyer as referred to in paragraph (10.1) the Seller shall be at liberty to charge to the Buyer the cost of any materials purchased by the Seller to fulfil the contract the Buyer if such materials cannot be used by the Seller in the course of its business.

10.3 - If such materials cannot be used by the Seller and the Seller incurs a loss in selling the materials then the Buyer shall repay to the Seller such loss as the Seller incurs.

## 11 General

11.1 - The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through a sub-contractor

11.2 - The Seller may upon giving prior written notice thereof to the Buyer assign the benefit and burden of its rights and obligations hereunder to a third party nominated by the Seller whereupon the rights and remedies of the Buyer hereunder shall be against such assignee to the exclusion of the Seller

11.3 - The Seller may refuse to print any work if in its opinion it contains matter likely to result in civil or criminal proceedings. Any Goods seized or ordered to be destroyed or made the subject of an injunction shall thereupon be deemed to have been delivered to the Buyer and the Seller shall be paid for the same and for all work carried out on or before the date of such seizure order or injunction as if so delivered

11.4 - Metal film glass and other material, used by the Seller in the production of the Goods shall remain its exclusive property and may be effaced. Terms and conditions of business and cease to be stored immediately after the Contract is completed unless instructions to the contrary in writing are given by the Buyer and accepted by the Seller in which case rent or other appropriate storage fees shall be charged to the Buyer

11.5 - 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

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

11.7 - 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.

11.8 - The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

11.9 - By accepting this Agreement you acknowledge and automatically authorise Symbian Print Intelligence Limited to use your name and logo for the express and sole purpose of identifying You as a client of Symbian Print Intelligence Limited in its marketing material, both print and electronic.

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