

WINDWARD PRINTING MACHINERY LTD - TERMS AND CONDITIONS

1. DEFINITIONS

In these Conditions except where the context otherwise requires, the following expressions have the following meanings:

The Company means Windward Printing Machinery Ltd The Customer means the Company, person or firm dealing with the Company

The Goods means the goods to be supplied by the Company pursuant to the contract

2. TERMS AND CONDITIONS

The Company will only contract to sell goods to a Customer subject to these Conditions of Sale. Any order placed by a Customer shall be subject to these Conditions, and any conditions of purchase or other conditions whether of general application or otherwise or purporting to be imposed by the Customer shall be of no effect notwithstanding that the same appear or purport to appear on any acceptance of any quotation/tender/offer, by the Company. No addition to or variation or exclusion of the Company's conditions shall have effect and no representation or warranty, collateral or otherwise shall bind the Company and no statement made by anyone whether purporting to act on behalf of the Company or otherwise shall vary these Conditions unless such representation, warranty, statement or variation shall be made in writing and signed by a Director of the company and shall be stated to be made specifically in pursuance of this clause. For the avoidance of any doubt the Customer expressly acknowledges and accepts that the Company's Conditions and no others except as aforesaid shall be applicable to the contract, and acceptance of Goods by the Customer shall conclusively evidence acceptance of these conditions.

3. WAIVER

Any variation or waiver of these conditions or any warranty representation or statement validly made by the Company pursuant to Clause 2 of these conditions on any one occasion shall be binding upon the Company only for the one contract and purpose specified, and shall not unless otherwise specifically agreed in writing affect any future contract or the applicability of these Conditions to any other purpose.

4. EXCLUSION

For the purpose of these conditions, the Company contracts on behalf of itself, its servants and agents, and insofar as any exclusion or limitation of liability or Indemnity hereinafter appears, the same shall ensure to the benefit not only of the Company but also its servants and agents.

5. DEATH OR PERSONAL INJURY

Where in these conditions the Company excludes or limits liability in respect of any loss or damage, the Company does not intend or purport thereby to exclude or limit liability for death or personal injury resulting whether wholly or in part from its own negligence or that of its agents, and these conditions shall take effect accordingly.

6. PRICES

The prices of the Goods shall be the price advised to the Customer as at date of their dispatch or as the case may be their collection from the Company's premises. Prices stated in all and any quotations by the Company are intended as guidance only, and both printed and quoted prices are subject to alteration should dispatch be delayed and/or the Goods being required to be held or stored by the Company longer than the quoted delivery date.

7. PAYMENT

Payment of the price plus V.A.T and any other statutory impositions or any delivery or other charges such as are provided to, in Clause 12 below is due in full and without any right of set off prior to or on the date of collection or delivery of the Goods and by way of cleared funds into our accounts. All and any monies remaining and unpaid to the Company after such due date shall bear interest of 6% above the base rate for the time being adopted by the Company's Bank, namely HSBC Bank Plc or such other Bank as may be notified to the customer in writing. If the Company has to instruct solicitors or other agents to recover monies owed by the Customer, the Customer will indemnify the Company in respect of all reasonable fees and costs payable by the Company to such solicitors or agents.

8. TIME

Time is not of the essence of any contract between the Company and the Customer and the Company will not be liable for any delays in the supply and/or delivery of Goods or any losses whatsoever due to any such delays howsoever caused. Dates for supply and/or delivery if quoted are approximate and quoted for guidance only, but without any responsibility on the part of the Company whatsoever.

9. FORCE MAJEURE

In the event of any strike, lock out, trade dispute, accident, fire, flood or any natural disaster war or civil disturbance, any statutes, rules regulations, orders or requisitions issued by any Government department, council or other duly constituted authority or act of God or delay in delivery of materials or any cause or contingency that whatsoever beyond the reasonable control of the Company affecting the Company's supply of Goods to be manufactured and/or adapted and/or supplied pursuant to this contract, this contract or that part thereof which is so affected may be terminated or suspended by the Company in its sole and absolute discretion. Such cancellation or suspension shall not constitute a breach of contract by the Company and the Company shall not be liable to the Customer for any loss or damage howsoever arising as a result of such cancellation or suspension. At any time during such suspension under this clause the Company may exercise its rights under this clause to terminate the contract. If the period of suspension exceeds 90 days the customer may terminate the contract by service of notice in writing upon the Company, such notice to expire 30 days after such service and to be effective to terminate the contract only if the period of suspension remains in force at the expiry of such notice period and such termination to be without liability for any loss or damage arising therefrom.

10. PROPERTY

i. All Goods delivered by the Company to or to the order of the Customer shall remain the property of the Company until all sums due to the Company on any account whatsoever have been paid in full.

ii. Until the termination of the contract, for example in manner provided in clauses 14 or 15 below, the Customer shall be entitled to sell any delivered goods whether delivered by the Company pursuant to this contract or to any other contract between the Company and the Customer, in the ordinary course of the Customers business.

iii. In the event of resale pursuant to sub clause (ii) thereof the Customer shall open a separate Bank account in the same name of the Company, and shall place in such Bank account and shall hold upon trust for the Company such part of the proceeds of resale as may be required to satisfy all sums due to the Company (whether under this contract or any other contract or otherwise) together with any interest payable thereon.

iv. In the event that the Customer fails to carry out the requirements of sub clause iii above and the Customer is a limited company the directors of the Customer shall and hereby agree to indemnify the Company for all and any losses arising howsoever from such breach.

11. RISKS

Notwithstanding the property in the Goods has not passed to the Customer, risk in the Goods shall pass to the Customer upon the making of this contract. If the Goods are unascertained the risk shall pass upon appropriation. The Customer is therefore recommended and advised to insure the Goods from the date of making of this contract.

12. DELIVERY

i. The customer will collect the Goods from the Company's address notified to the Customer immediately upon being notified by the Company that the Goods are ready for collection.

ii. The Company will if so requested arrange for delivery or shipment of the Goods to the Customer's order upon such terms that the Customer will pay all delivery packing or other charges or duties in respect thereof, which will be included in the invoice for the Goods and which must be paid in cleared funds before any delivery or shipment takes place.

13. SHORTAGES OR ERRORS

i. All Goods supplied by the Company shall be examined and checked immediately upon receipt by the Customer. Unless the Company is notified by letter dispatched within seven days of receipt of a material consignment (time being of the essence) of any alleged shortages or errors in such consignment, no claim whatsoever will be entertained by the Company in respect of any alleged shortages or of any allegation that the wrong goods have in error been supplied, and the Company will in no circumstances whatsoever be liable to replace or make good the same or be under any liability whatsoever to the customer in respect of the same, howsoever caused.

ii. If the Company is so notified and if such notified shortage or error is proved, the Company shall as soon as possible replace or make good the same, or if through circumstances beyond their control such replacement or making good is not possible than they shall refund the proportionate amount of the purchase price paid or in so far as such purchase price has not yet been paid give credit accordingly but in no circumstances whatsoever will the Company be further liable or in particular be responsible to, any consequential loss allegedly caused by such shortage or error, howsoever occasioned.

14. DEFAULTS

i. Whilst any sums are owing by the Customer to the Company (whether pursuant to this contract or to any other contract) the Company reserves the right to suspend further deliveries under any contract with the Customer whether such contract was made before or after any contract in respect of which money is owing to the Company.

ii. In the event of the Customer failing to pay in due time and in full the amount due under any invoice the Company shall (without prejudice to all and any of its other rights) be entitled.

a. At its entire discretion upon giving notice in writing to the Customer to terminate without any liability whatsoever on its part any such agreement or further agreement upon which further deliveries of goods are or remain to be made, and recover from the Customer in respect of such agreement or further agreements so terminated the Company's loss or profit and/or other losses caused thereby.

b. Upon 24 hours notice in writing to the Customer to repossess Goods delivered to the Customer and not paid for in full (and for that purpose to enter upon the property in which time the same are situated) and (without prejudice to its rights pursuant to Clause 10 above) thereafter to resell the same, giving credit for the resale price or salvage value if any against the sums due and unpaid including interest.

c. In relation to any future order or balance of order to insist on payment in full on a proforma invoice basis only.

iii. If the Customer fails to collect the Goods or to accept delivery of the Goods or any of them in accordance with clause 12 hereof the Company may (without prejudice to its rights to treat such failure as repudiatory) store such goods at the cost and expense (including insurance) of the Customer.

15. INSOLVENCY

In the event that (being an individual) the Customer commits an act of bankruptcy or has a receiving order made against him or (being a company) enters into liquidation (whether compulsory or voluntary) or has a receiver or manager appointed of the whole or any part of its business or undertaking, or if distress or execution be levied or threatened upon any of the Customer's property, then the Company shall (without prejudice to all and any other rights it may have) have the same rights as set out in clause 14 above.

16. PATENTS/LPVRFGHTS etc

All drawings, calculations, brochures and instructive matter furnished by the Company to the Customer in connection with his contract are and shall remain the Company's property, and must not be copied or shown to a third party (save where necessary in the ordinary course of the Customers business) without the written consent of the Company. The Customer shall indemnify the Company against all damages, costs, losses, penalties, claims and other matters whatsoever arising out of the infringement or alleged infringement of any patent, registered design or copyright or in respect of any passing off action which may result from the Company's carrying out or procuring the carrying out of work in respect of the manufacture and/or adaptation of the goods the subject matter of this contract in accordance with the requirements and/or to the order of the Customer.

17. SPECIFICATION etc

The company takes due care in furnishing all and any written descriptions, illustrations, specifications or other particulars in catalogues, brochures, price lists or other documents issued by the Company, but such information is subject to alteration without notice and no warranty is given as to its accuracy nor is it or any of it incorporated as a term of this or any contract between the Company and the Customer, save and except if any such information is specifically confirmed in writing to the Customer by the Company other than in a quotation and then only subject to recognized tolerances and in no circumstances whatever is the Company liable for any oral statement as to the nature, condition, specification, performance, quality, suitability or endurance of or in any other manner relating to the goods whether made negligently or otherwise and whether purporting to be made or on behalf of the company, nor for any loss of any kind whatever howsoever caused resulting there from.

18. DEFECTS

i. The Customer shall be free at his own expense to test inspect and approve the Company's goods or sample the Company's goods prior to the contract, but unless the Customer shall have specifically disclosed the purpose for which he requires the Goods, and the Company shall have given a specific warranty in writing that the Goods are fit for such purpose, the Company gives no warranty whatsoever that the Goods are fit for the Customer's purpose.

ii. Save and subject as aforesaid the Company warrants that all Goods supplied to the Customer are at the time they are dispatched to or collected by the Customer of merchantable quality and free from material defects and (insofar as the Company may not upon acceptance of the order have stated otherwise) substantially in accordance with the Company's quotation if any and fit for their ordinary purpose. However the Company shall in no circumstances whatsoever be liable for the breach of such warranty howsoever caused unless such defects or failure or non correspondence with description or any other complaints or such breach are notified in writing to the Company by the Customer by letter dispatched within three months of the receipt of the goods and within five days of the discovery by the Customer of such complaint, whereupon immediately after such notice being given the Customer shall return the goods to the Company's premises carriage paid unless the goods be physically incapable of being returned to the Company for inspection by or on behalf of the Company and:

a. In respect of such complaints so notified which are found upon examination by or on behalf of the Company to render the Company in breach of their said warranty, the Company will (at its entire discretion) replace or repair free of charge the Goods in question, or, if replacement or repair is impossible, shall refund the purchase price, reimbursing or paying for all necessary transport charges limited to the cost of transport from and/or to the original consignment address of the Goods.

b. If the Goods so complained of are found not to be defective than they will be returned to the Customer at the Customers expense and the Customer shall reimburse to the Company all its expenses arising out of the making and investigating of the complaint.

iii. Save as aforesaid no other condition or warranty is expressed or implied in the contract, and the Company will accept no responsibility and is under no liability whatsoever in respect of any defects in the Goods howsoever caused or any loss consequential or otherwise howsoever occasioned. In the circumstances, the Customer is advised to check the Goods before use or before either incorporating them into other goods or carrying out works or alteration or adaption thereto.

19. ADVICE etc

Any advice or recommendation given orally or in writing by the Company its servants or agents whether requested by the Customer or any other party or not is for guidance only and is not intended to be relied upon, and the Company shall not be under any liability whatsoever in respect of any act or omission of any recipient (whether direct or indirect) of any such advice or recommendation or in respect of any loss whatsoever occasioned in any manner resulting therefrom.

20. CONSEQUENTIAL LOSS

For the avoidance, of doubt, the Company shall not in any circumstances whatsoever (even in respect of defects for which the Company may have pursuant to clause 18 above accepted responsibility) be liable for any consequential losses whether arising out of inability of the Customer or any other party to use the Goods or out of any use made of them or howsoever occasioned.

21. INDEMNITY

i. Subject to sub clause (ii) below the Customer shall at all times keep the Company, its servants and agents effectively indemnified against all actions, proceedings, costs, charges, claims, expenses and demands whatsoever which may be made or brought against the Company its servants or agents by any third party in respect of any alleged injury, loss damage or expense arising out of, or in connection with the Goods or services supplied by the Company to the Customer.

ii. Where actions, proceedings, costs, charges, claims, expenses and demands such as are referred to in (i) above are in aspect of death or personal injury caused wholly or in part by the negligence of the Company, its servants or agents, neither the Company nor its servants or agents shall claim indemnity from the Customer in respect of such proportion of such actions, proceedings, costs charges, claims expenses or demands as shall be found to be due to their own negligence.

22. NOTICES

All notices to be served by one party on the other (unless specifically provided for in these conditions) shall be deemed duly served seven days after posting if posted by first class or airmail pre paid post to the registered office of the other party or in the absence of such registered office to the address notified in writing between the parties to or at the date of contract.

23. ENGLISH LAW AND JURISDICTION

This contract and these conditions shall be governed and interpreted by English Law, and the parties hereby irrevocably submit to the jurisdiction of the English courts.

24. HEADINGS

The headings to each clause are for identification only and are not intended to form part of these conditions.