

BURALL INFOSMART LTD - STANDARD TERMS & CONDITIONS OF SALE

The following Terms and Conditions and the Buyer's Purchase Order constitute the entire agreement between the parties and supersede any previous agreements, warranties, representations, undertakings or understandings between the parties and may not be varied except in writing.

1. Definitions

- a. "Seller" means Burall InfoSmart Ltd, the party providing the goods or services under these terms and conditions.
- b. "Buyer" means the party contracting with the Seller to acquire the good and services supplied under these terms and conditions.
- c. "Buyer's Purchase Order" means the Buyer's order for the Work, as set out in the Buyer's written acceptance of the Seller's quotation.
- d. "Conditions" means the terms and conditions set out in this document.
- e. "Contract" means the contract between the Seller and the Buyer for the sale and purchase of the Works in accordance with these Conditions.
- f. "Work" means all goods (by way of intermediate or finished product) and services supplied by the Seller to the Buyer.
- g. "Intermediates" means all products produced during the manufacturing process including non-exhaustively discs, film, plate, software, tooling and intellectual property.
- h. "Preliminary Work" means all work done in the concept and preparatory stages (including non-exhaustively design, artwork, colour matching, samples, trial software, setting up secure data-exchange).
- i. "Electronic File" means any text, illustration, data file, software or other matter supplied or produced by either Party in digitised form on disc, through a modem, or by ISDN or any other communication link.
- j. "Insolvency" means the Buyer is in a position where it is unable to pay its debts or has a winding up petition issued against it or has a receiver, administrator or administrative receiver appointed to it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him.

2. Basis of Contract

- a. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- b. The Buyer's Purchase Order constitutes an offer by the Buyer to purchase the Works in accordance with these Conditions. The Buyer shall ensure that the terms of the Buyer's Purchase Order and any relevant specification are complete and accurate.
- c. The Buyer's Purchase Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Buyer's Purchase Order, at which point the Contract shall come into existence.
- d. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Works described in them. They shall not form part of the Contract or any other contract between the Seller and the Buyer for the sale of the Works.
- e. A quotation for the Works given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3. Payment

- a. Prices are based on the Seller's current costs of production and, unless otherwise agreed in writing, are subject to amendment to meet any rise or fall in such costs that have taken place by the time of delivery.
- b. Prices exclude delivery which shall be charged at the standard rates of Royal Mail or other appropriate carrier.
- c. Prices are given exclusive of tax and the Seller shall charge and the Buyer shall pay any VAT or other tax payable at the prevailing rate.
- d. All work carried out shall be charged. This includes all Preliminary Work at the Buyer's request, whether or not the Buyer agrees to that work being taken forward to production.
- e. Any additional work required of the Seller by reason of the Buyer supplying inadequate copy, incomplete or incorrect instructions or insufficient materials; or late delivery of the same may be charged.
- f. Payment shall become due before delivery of the Work. The Seller, at his absolute discretion, may ask for part or full payment in advance of starting the Work.
- g. If Credit Facilities have been granted, payment is due within 30 days of Invoice.
- h. Without prejudice to any other rights of the Seller, if the Buyer fails to pay the invoice price by the due date, the Buyer shall pay interest on any overdue amount from the date on which payment was due to the date of the actual payment (whether before or after judgement) on a daily basis at a rate of 4% p.a. over the base rate quoted from time to time by Barclays Bank plc and reimburse to the company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
- i. Unless otherwise agreed in writing, the price of the Work will be "ex-works" and delivery shall be charged extra, as per clause 3(b).
- j. Should the Work be suspended or delayed by the Buyer for any reason the Seller shall be entitled to charge for storage and for loss of or wastage of resources that cannot otherwise be used.
- k. Should the suspension or delay in 3(j) above extend beyond 30 days the Seller shall be entitled to immediate payment for work already carried out, materials specially ordered and any other additional costs attributable to the Work.

- l. Without limiting any other remedies or rights that the Seller may have, if the Buyer does not pay by the due date, the Seller may cancel or suspend any other outstanding order until the Buyer has paid any outstanding amounts.

4. Credit Facilities

- a. Credit facilities may be granted to applicants who complete the Seller's Credit Application Form and who satisfy the Seller's criteria as set out from time to time. Where facilities are granted the Seller reserves the right to withdraw them at any time, without having to give their reasons and, in such a case, all outstanding invoices become due and payable immediately.
- b. Following a successful Credit Application, or following any change in credit terms, the Seller shall inform the Buyer of their appropriate credit limit. It is the Buyer's responsibility to ensure they trade within this limit. Requests for an extension to a notified credit limit will not be considered until the Buyer's account is brought into line with the notified credit limit.

5. Delivery

- a. Delivery times are quoted from approval of proofs and subject to timely receipt of necessary materials and information from the Buyer
- b. Unless otherwise agreed in writing completion and delivery times are a guide only and, whilst the Seller will make every effort to adhere to proposed timescales, time is not of the essence in any contract with the Buyer.
- c. Unless otherwise agreed in writing, (in which case an extra charge may be made) delivery will be to a single delivery address specified in the Buyer's Purchase Order.
- d. Subject to any agreement as per 5(c) above, delivery involving difficult access and/or unreasonable distance from vehicular access shall entitle the Seller to make an extra charge to reflect its extra costs.
- e. Should expedited delivery be agreed the Seller shall be entitled to make an extra charge to cover overtime or other additional costs.
- f. If the Buyer fails to take delivery of the Work when notified by the Seller, then the Seller will store the Work until delivery can take place and shall make an extra charge to cover any additional costs.
- g. If the Buyer has not taken delivery of the Work within 2 weeks of the Seller notifying the Buyer that the Work is ready to be delivered, the Seller may, after giving reasonable prior notice in writing, resell or otherwise dispose of the Work (and after deducting reasonable storage and selling costs, pay the Buyer for any excess over the price of the Work or charge the Buyer for any shortfall below the price of the Work).

6. Materials supplied or specified by the Buyer

6.1 Electronic Files

- a. It is the Buyer's responsibility to maintain a copy of any original Electronic File, including personal data, provided by the Buyer.
- b. The Seller shall not be responsible for checking the accuracy of supplied input from an electronic file unless otherwise agreed in writing.
- c. Without prejudice to clause 6.2(b), if an electronic file is not suitable for use without adjustment or other corrective action the Seller may make a charge for any resulting additional cost incurred or may reject the file without prejudice to his rights to payment for work done/material purchased.
- d. The Seller shall take reasonable care with personal data provided by the Buyer and, for the purpose of the Data Protection Act, the Buyer shall remain the Data Controller and the Seller shall be a Data Processor.

6.2 Other Materials

- a. Metal, film and other materials owned by the Buyer and supplied to the Seller for the production of type, plates, film-setting, negatives, positives, electronic files and the like shall remain the Buyer's exclusive property. However where the content is generated by the Seller, the Seller may, in order to protect his intellectual property rights and at his absolute discretion, replace such material with unused material of a similar or better quality.
- b. The Seller may reject any film, discs, paper, plates, electronic files or other materials supplied or specified by the Buyer which appear to him to be unsuitable for the purpose intended. Additional cost incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by the Seller in ascertaining the unsuitability of the materials then that amount shall not be charged to the Buyer.
- c. Without prejudice to clause 6.2(b), where materials are so supplied or specified, and the Seller so advises the Buyer, and the Buyer instructs the Seller in writing to proceed anyway, the Seller will use reasonable endeavours to secure the best results, but shall have no liability for the quality of the end-product(s).
- d. Quantities of any materials supplied to the Seller by or on behalf of the Buyer shall be adequate to cover normal spoilage. Any costs incurred as a result of shortages, including re-starting jobs, duplicating masters etc will be charged in addition to the quoted price.

6.3 Risk and storage

- a. Buyer's property and all property supplied to the Seller by or on behalf of the Buyer shall while it is in the possession of the Seller or in transit to or from the Buyer be deemed to be at Buyer's risk unless otherwise agreed in writing and the Buyer should insure accordingly.
- b. The Seller shall be entitled to make a reasonable charge for the storage of any Buyer's property left with the Seller before receipt of the order or after notification to the Buyer of completion of the work.

6.4 Finished Goods

- a. The risk in the Work and all goods delivered in connection with the Work shall pass to the Buyer on delivery and the Buyer should insure accordingly.
- b. On completion of the Work, the Seller will store any Buyer's materials and Work for a maximum of one month, after which time they will be destroyed without further notice.

7. Materials and equipment supplied by the Seller

Metal, film, production & data-processing software and other materials owned by the Seller and used in the production of intermediates, type, plates, film-setting, negatives, positives, electronic files and other production processes, together with items thereby produced, shall remain the Seller's exclusive property.

8. Retention of Title

- a. The Work remains the Seller's property until the Buyer has paid for it and discharged all other debts owing to the Seller.
- b. If the Buyer becomes subject to Insolvency and the Work has not been paid for in full the Seller may take the goods back and, if necessary, enter the Buyer's premises to do so, or to inspect and/or label the goods so as to identify them clearly.
- c. If the Buyer shall sell the goods before they have been paid for in full he shall hold the proceeds of sale on trust for the Seller in a separate account until any sum owing to the Seller has been discharged from such proceeds.
- d. Until title to the Work has passed to the Buyer, the Buyer shall:
 - i) hold the Work on a fiduciary basis as the Seller's bailee;
 - ii) where possible store the Work separately from all other goods held by the Buyer so that it remains identifiable as the Seller's property;
 - iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Work; and
 - iv) maintain the Work in satisfactory condition and keep it insured against all risks for its full price from the date of delivery, but the Buyer may resell or use the Work in the ordinary course of its business.
- e. Where the Buyer is in breach of these Terms or performs any act of Bankruptcy or Insolvency the Seller reserves the right to approach the Buyer's customer and to offer the Work directly to them, notwithstanding the fact that this will involve advising the Buyer's customer that the Buyer is in breach or in default.
- f. The Buyer shall immediately inform the Seller if it performs any act of insolvency.

9. Proofs and Variations

- a. The Seller shall incur no liability for any errors not corrected by the Buyer where the Buyer has been provided with proofs. The Buyer's alterations and additional proofs necessitated thereby may be charged extra. When style, type or layout is left to the Seller's judgement, changes therefrom made by the Buyer shall be charged extra.
- b. Where the Buyer specifically waives any requirement to examine proofs the Seller is indemnified by the Buyer against any and all errors in the finished Work.
- c. Colour proofs - Due to differences in equipment, paper, cards, inks and other conditions between colour proofing and production runs, a reasonable variation in colour between colour proofs and the completed job will be deemed acceptable.
- d. Variations in quantity. Every endeavour will be made to deliver the correct quantity ordered, but quotations are conditional upon margins of 5 per cent for work being allowed for overs or unders the same to be charged or deducted, unless otherwise agreed in writing.

10. Claims and Liability

Claims

- a. Advice of damage, delay or loss of goods in transit or of non-delivery must be given in writing to the Seller and the carrier within three clear days of delivery (or, in the case of non-delivery, within 3 days of notification of despatch of the goods) and any claim in respect thereof must be made in writing to the Seller and the carrier within seven clear days of delivery (or, in the case of non-delivery, within 7 days of notification of despatch). All other claims must be made in writing to the Seller within 14 days of delivery. The Seller shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Buyer proves that (i) it was not possible to comply with the requirements and (ii) the claim was made as soon as reasonably possible.
- b. If the Work is defective so that the Buyer may in law reject it, said rejection must take place within 7 days of delivery of the goods, failing which the Buyer will be deemed to have accepted the Work.
- c. In the event of all or any claims or rejections the Seller reserves the right to inspect the Work within seven days of the claim or rejection being notified.

Liability

- d. Insofar as is permitted by law where Work is defective for any reason, including negligence, the Seller's liability (if any) shall be limited to rectifying such defect, or crediting its value against any invoice raised in respect of the Work.
- e. Where the Seller performs its obligations to rectify defective Work under this condition the Seller shall not be liable for indirect loss, consequential loss or third party claims occasioned by defective Work and the Buyer shall not be entitled to any further claim in respect of the Work nor shall the Buyer be entitled to repudiate the contract, refuse to pay for the work or cancel further deliveries.
- f. Defective Work must be returned to the Seller before replacement or credits can be issued. If the subject Work is not available to the Seller the Seller will hold that the Buyer has accepted the Work and no credits or replacement Work will be provided.
- g. The Seller shall not be liable for indirect loss, consequential loss or third party claims occasioned by delay in completing the work or for any loss to the Buyer arising from delay in transit, whether as a result of the Seller's negligence or otherwise.

- h. Where the Seller offers to replace defective Work the Buyer must accept such an offer unless he can show clear cause for refusing so to do. If the Buyer opts to have the work re-done by any third party without reference to the Seller the Buyer automatically revokes his right to any remedy from the Seller, including but not exclusively the right to a credit in respect of Work done by the Seller.
- i. Where the Work will be forwarded by or on behalf of the Buyer to a third party for further processing the Buyer will be deemed to have inspected and approved the Work prior to forwarding and the Seller accepts no liability for claims arising subsequent to the third party's processing.
- j. The seller warrants that at the time of delivery the Work shall be free of defects in materials and workmanship. The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working or storage conditions, failure to follow the Seller's instructions, misuse or alteration or repair of the Work without the Seller's prior approval.
- k. Nothing in these conditions shall exclude the Seller's liability for:
 - i) death or personal injury as a result of its negligence;
 - ii) fraud or fraudulent misrepresentation; or
 - iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - iv) defective products under the Consumer Protection Act 1987.

11. Insolvency

Without prejudice to other remedies, if the Buyer becomes insolvent, the Seller shall have the right not to proceed further with the contract or any other work for the Buyer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Buyer, such charge to be an immediate debt due to him. Any unpaid invoices shall become immediately due for payment.

12. Assignment

The Buyer shall not assign, sub-contract, license or otherwise dispose of any part of its rights or obligations under this contract without the prior written consent of the Seller.

13. Illegal Matter

- a. The Seller shall not be required to print any matter which in his opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.
- b. The Seller shall be indemnified by the Buyer in respect of any claims, costs and expenses arising out of the printing by the Seller for the Buyer of any illegal or unlawful matter including matter which is libellous or infringes copyright, patent, design or any other proprietary or personal rights. The indemnity shall include (without limitation) any amounts paid on a lawyer's advice in settlement of any claim that any matter is libellous or such an infringement.

14. Force Majeure

The Seller shall be under no liability if he shall be unable to carry out any provision of the contract for any reason beyond his reasonable control including (without limiting the foregoing): Act of God; legislation; war; fire; flood; drought; inadequacy or unsuitability of any instructions, electronic file or other data or materials supplied by the Buyer; failure of power supply; lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute; or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Buyer may by written notice to the Seller elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

15. Data Protection

The Buyer is hereby notified that the Seller may transfer personal information about the Buyer to a Credit Agency pursuant to clause 3(g) above.

16. Law

These conditions and all other express and implied terms of the contract shall be governed and construed in accordance with the laws of England and the parties agree to submit to the jurisdiction of the courts of England and Wales.

17. Notices

All specifications and notices relied on by either party and all variations to this agreement must be in writing and include a duly authorised signature.

18. Consumers

Nothing in these Terms shall affect the rights of Consumers.

19. Severability

All clauses and sub-clauses of this Agreement are severable and if any clause or identifiable part thereof is held to be unenforceable by any court of competent jurisdiction then such enforceability shall not affect the enforceability of the remaining provisions or identifiable parts thereof in these Terms and Conditions.

20. Waiver

No waiver by the Seller of any breach by the Buyer of any provision of these Terms and Conditions of Sale shall be deemed a waiver of any subsequent breach of the same or any other provision.