

LUXFER GRAPHIC ARTS

a division of MAGNESIUM ELEKTRON LIMITED ("Supplier")

TERMS AND CONDITIONS OF SUPPLY ("Conditions")

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for business in England;
Confidential Information	means information of a confidential nature disclosed (whether in writing, orally or by another means and whether directly or indirectly) by one party to the other party whether before or after the date of the Contract including, without limitation, information relating to the products, pricing, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs of the disclosing party or a member of the its group;
Contract	means the agreement between the Supplier and the Customer for the sale and purchase of Products in accordance with these Conditions;
Customer	means the party who purchases the Products from the Supplier and whose details are set out in the Order;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract;
Location	means the address for delivery of the Products as set out in the Order;
Order	means the Customer's order for the Products;
Price	has the meaning given in clause 3.1;
Products	means the products of the Supplier set out in the Order;
Specification	means the specification for the Products set out in the Order or otherwise agreed in writing by the Customer and Supplier;
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Products.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 any phrase introduced by the terms **including, include, in particular**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.3 a reference to **writing** or **written** includes emails and faxes.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing.
- 2.2 Each Order shall be an offer from the Customer to purchase Products from the Supplier subject to these Conditions.

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- 2.3 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Products shall arise, until the Supplier issues a written acknowledgement of Order, at which point the Contract shall come into existence.
- 2.4 Any quotation given by the Supplier shall not constitute an offer and shall only remain valid for a period of 30 days from its date of issue.
- 2.5 No variation of the Contract shall be binding unless expressly agreed by the Supplier in writing.
- 2.6 Marketing and other promotional material relating to the Products are illustrative only and do not form part of the Contract.

3 Price

- 3.1 The price for the Products shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier before the date the Order is made (**Price**).
- 3.2 The Price shall be exclusive of:
 - 3.2.1 VAT (or equivalent sales tax); and
 - 3.2.2 packaging, delivery, and insurance which shall be charged in addition at the Supplier's standard rates, unless an alternative basis is agreed by the Supplier in accordance with a specific Incoterm (to be stated in the Order).
- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

4 Payment

- 4.1 The Supplier may invoice the Customer at time after the Products are despatched.
- 4.2 The Customer shall pay all invoices in full and cleared funds, to the bank account nominated by the Supplier, within 30 days of the date of each invoice unless otherwise agreed in writing by the Supplier.

5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Delivery

- 6.1 Incoterms (based on ICC 2010 standards) will apply to the delivery of all Products. Reference to the Incoterms agreed between the parties for each supply will be included in the Order.
- 6.2 The Customer shall not be entitled to reject any delivery of Products on the basis that an incorrect volume of Products has been supplied provided the volumes are within the tolerances (if any) set out in the Order.
- 6.3 The Products may be delivered by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.4 Delivery of the Products shall be accompanied by a despatch note stating:
 - 6.4.1 the date of the Order;
 - 6.4.2 the product numbers, type and quantity of Products in the consignment; and
 - 6.4.3 any special handling instructions.
- 6.5 Any delay in delivery of the Products shall not entitle the Customer to terminate the Contract.
- 6.6 The Supplier shall not be liable for any delay in or failure of delivery caused by:
 - 6.6.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location as required for delivery or (iii) provide the Supplier with adequate instructions for delivery;
 - 6.6.2 the Customer's failure to collect the Products from the Supplier's premises; or
 - 6.6.3 Force Majeure.

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- 6.7 If the Customer fails to accept delivery of the Products the Supplier shall store and insure the Products pending delivery, and the Customer shall pay all costs and expenses incurred by the Supplier in doing so.
- 7 Risk**
- Risk in the Products shall pass to the Customer on delivery.
- 8 Title**
- 8.1 Title to the Products shall pass to the Customer once the Supplier has received payment in full for such Products or, if the Customer resells the Products in accordance with clause 8.3, immediately prior to such resale.
- 8.2 Until title to the Products has passed to the Customer, the Customer shall:
- 8.2.1 hold the Products as bailee for the Supplier;
 - 8.2.2 store the Products separately from all other material in the Customer's possession;
 - 8.2.3 take all reasonable care of the Products and keep them in the condition in which they were delivered;
 - 8.2.4 insure the Products from the date of delivery;
 - 8.2.5 ensure that the Products are clearly identifiable as belonging to the Supplier; and
 - 8.2.6 not remove or alter any mark on or packaging of the Products.
- 8.3 Notwithstanding clause 8.2, the Customer may use or resell the Products in the ordinary course of its business until such time as it becomes aware, or ought reasonably to have become aware, that an event specified in clause 14.1 has occurred or is likely to occur. At which time, without limiting any other right or remedy the Supplier may have, the Customer's right to resell the Products or use them in the ordinary course of its business ceases immediately.
- 8.4 If, at any time before title to the Products has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clause 14.1 the Supplier may enter any premises where the Products are stored and repossess them.
- 9 Warranty**
- 9.1 The Supplier warrants that on delivery the Products shall conform in all material respects to the Order and Specification.
- 9.2 The Supplier shall, at its option, repair, replace, or refund the Price of any Products that do not comply with clause 9.1, provided that the Customer:
- 9.2.1 serves a written notice on the Supplier:
 - (a) in the case of defects discoverable by physical inspection, within 21 days of the date of delivery; or
 - (b) in the case of latent defects, within 21 days of the date on which Customer becomes aware (or should reasonably have become aware) of the defect;
 - 9.2.2 provides the Supplier with sufficient information as to the nature and extent of the defects and the uses to which the Products had been put prior to the defect arising;
 - 9.2.3 gives the Supplier a reasonable opportunity to examine the defective Products; and
 - 9.2.4 returns the defective Products to the Supplier at the Supplier's expense.
- 9.3 The provisions of these Conditions, including the warranties set out in clause 9.1, shall apply to any Products that are repaired or replaced with effect from delivery of the repaired or replaced Products.
- 9.4 The Supplier shall not be liable for any failure of the Products to comply with clause 9.1:
- 9.4.1 which is due to wear and tear, wilful damage or negligence of the Customer;

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- 9.4.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions;
 - 9.4.3 to the extent caused by the Supplier following any request or requirement of the Customer;
 - 9.4.4 where the Customer modifies the Products without the Supplier's prior consent; or
 - 9.4.5 where the Customer uses the Products after notifying the Supplier that they do not comply with clause 9.1.
- 9.5 Except as set out in this clause 9, the Supplier gives no warranties and makes no representations in relation to the Products and all warranties and conditions (including the conditions implied by sections 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 10 Applicable laws and export controls**
- 10.1 The parties shall comply with all applicable laws and regulations with respect to their performance of the Contract.
- 10.2 The Customer undertakes to adhere to all applicable sanctions and export control laws and regulations with respect to the use and onward supply of the Products and shall take no action relating to the Products which may cause the Supplier to breach any law or regulation to which it is subject
- 10.3 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of its obligations under this clause 10.
- 11 Limitation of liability**
- 11.1 The extent of the parties' liability under or relating to the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clause 11.4, the Supplier's total liability relating to each Order shall not exceed the price paid for the Products supplied pursuant to that Order.
- 11.3 Subject to clause 11.4, the Supplier shall not be liable for loss of profit, loss of data, loss of use, loss of production, loss of contract, loss of opportunity, loss of savings, discount or rebate (whether actual or anticipated), harm to reputation or loss of goodwill (in each case whether direct or indirect).
- 11.4 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.4.1 death or personal injury caused by negligence;
 - 11.4.2 fraud or fraudulent misrepresentation; or
 - 11.4.3 any other losses which cannot be excluded or limited by applicable law.
- 12 Confidentiality and announcements**
- 12.1 Any existing confidentiality undertakings between the parties shall continue in full force and effect. In the event of a conflict between an existing confidentiality agreement and these Conditions, the terms of these Conditions shall prevail.
- 12.2 The Customer shall keep confidential all Confidential Information of the Supplier, and any company within its group, and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 12.2.1 any information which was in the public domain prior to the date of its disclosure by the Supplier to the Customer or which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement; or
 - 12.2.2 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

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- 12.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. No licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.
- 12.4 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 12.5 This clause 12 shall remain in force in perpetuity.

13 Force Majeure

- 13.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 13.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 13.1.2 uses all reasonable endeavours to minimise the effects of that event.
- 13.2 If, due to Force Majeure, a party:
- 13.2.1 is or shall be unable to perform a material obligation; or
- 13.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 90 days;
- the parties shall, within 90 days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

14 Termination

- 14.1 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 14.1.1 commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- 14.1.2 takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- 14.1.3 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 14.2 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 15, it shall immediately notify the Supplier in writing.
- 14.3 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

15 Notices

- 15.1 Any notice required to be given under these Conditions shall be in writing and in English and shall be delivered personally, by commercial courier or by email or fax to the relevant party at the address set out in the Contract or any other address as either party notifies to the other from time to time or, if sent by email or fax, to an email address or fax number nominated by the parties. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand), on the date and at the time of signature of the courier's delivery receipt (if sent by commercial courier), or 24 hours from delivery if sent to the correct email address or fax number and no notice of delivery failure is received. This clause does not apply to notice given in legal proceedings, arbitration or other dispute resolution proceedings.

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16 Entire agreement

- 16.1 The parties agree that the Contract and the documents referred to herein constitute the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 16.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract.
- 16.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

17 Variation

No variation of the Contract shall be valid unless it is in writing and executed on behalf of the Supplier.

18 Assignment

- 18.1 The Customer may not assign or subcontract any right or obligation under the Contract without the Supplier’s prior written consent.

19 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party’s behalf.

20 Severance

- 20.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

21 Waiver

- 21.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- 21.1.1 waive that or any other right or remedy; nor
- 21.1.2 prevent or restrict the further exercise of that or any other right or remedy.

22 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

23 Third party rights

- 23.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

24 Governing law

The Contract and any dispute or claim arising out of, or relating to, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

25 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of, or relating to, the Contract, its subject matter or formation (including non-contractual disputes or claims).