

**TERMS AND CONDITIONS OF DURST
IMAGE TECHNOLOGY (UK) LIMITED**

TERMS AND CONDITIONS OF SERVICE

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in these terms and conditions
(Conditions) Company: Durst Image Technology (UK) Limited incorporated and registered in England and Wales with company number 5777174 whose main place of business is 317 Kingston Road, Leatherhead, Surrey KT22 7TU.

Contract: any contract between the Company and the Customer for the supply of services, incorporating these conditions.

Customer: the person, firm or company who purchases the Services from the Company

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Deliverables: all Documents, products and materials developed by the Company in relation to the Contract in any form, including but not limited to computer programs, data, reports and specifications (including drafts or the deliverables specified in the Contract as the case may be.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all

similar or equivalent rights or forms of protection in any part of the world.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the data controller and in relation to which the Company is providing Services under the Contract.

Services: the services and/or goods to be provided by the Company to the Customer under, and specified in, the Contract.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.1 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.2 Words in the singular include the plural and in the plural include the singular.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

1.5 A reference to writing or written includes emails.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

(a) Apply to and be incorporated into the Contract; and

(b) Prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the

Company, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Company other than:

(a) By a written acknowledgement issued and executed by the Company; or

(b) (If earlier) by the Company starting to provide the Services,

When a contract for the supply and purchase of those Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 Quotations are given by the Company on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Company has not previously withdrawn it.

3. COMMENCEMENT AND DURATION

3.1 The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's offer in accordance with condition 2.2.

3.2 The Services supplied under the Contract shall continue to be supplied for the term period specified under the Contract unless the Contract is terminated in accordance with condition 12.

4. COMPANY'S OBLIGATIONS

4.1 The Company shall use reasonable endeavours to manage and complete / provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Contract.

4.2 The Company shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under condition 5.1(d), provided that it shall

not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as requested by the Company;
- (b) Provide, in a timely manner, such information as the Company may request and ensure that it is accurate in all material respects;
- (c) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Company of all of its obligations and actions under this condition 5.1(c);
- (d) Inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
- (e) Ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards;
- (f) Obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of the Customer's Equipment in relation to the Company's Equipment in all cases before the date on which the Services are to start.

5.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or

omission of the Customer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

5.3 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of six months after the last date of supply of the Services or the termination of the Contract) whichever is the later), solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services.

5.5 Any consent given by the Company in accordance with condition 5.4 shall be subject to the Customer paying to the Company a sum equivalent to 20% of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

6. CHANGE CONTROL

6.1 If either party requests a change to the scope or execution of the Services, the Company shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) The likely time required to implement the change;
- (b) Any variations to the Company's charges arising from the change; and

(c) Any other impact of the change on the terms of the Contract.

6.2 The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. The Company may, from time to time change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least 3 months' notice of any change.

6.3 If the Customer wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

6.4 The Company may charge for its time spent in assessing a request for change from the Customer on a time and materials basis in accordance with condition 7.

7. CHARGES AND PAYMENT

7.1 Where under Contract the Company provides the Services on a time and materials basis the price will be provided in the contract on the following basis:

- (a) Where the Services are provided on a time and materials basis the charges payable for the Services shall be calculated in accordance with the Company's standard daily fee rates (including any overtime rates from time to time in force), as amended from time to time and shall be exclusive of VAT which the Company shall add to its invoices at the appropriate rate;
- (b) the Company shall ensure that every individual whom it engages on the Services completes time sheets recording time spent, and the Company shall use such time sheets to calculate the charges covered by each monthly

invoice referred to in condition 7.1(c); and

(c) The Company shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7.1(a). Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

(d) Customers financing the purchase of equipment, will be required to provide written confirmation to the Company that the invoice for sale will be paid immediately by the Finance House.

(e) Customers financing the purchase of equipment, are to provide written confirmation to the Company of the Finance House's acceptance that they will provide the necessary funds to cover the relevant purchase.

(f) Should a Contract with the Customer fail to be completed the Customer will be liable for any reasonable costs including VAT incurred by the Company to be paid in full within 30 days of demand.

(g) Any Deposit received from the Customer will be non-refundable in any event.

7.2 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Contract. The total price shall be paid to the Company (without deduction or set-off) [in instalments, as set out in the Contract. At the end of a period specified in the Contract in respect of which an instalment is due], the Company shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in condition 7.4

7.3 Any fixed price and/or daily rate contained in the Contract excludes VAT unless otherwise stated, which the

Company shall add to its invoices at the appropriate rate.

7.4 The Customer shall pay each invoice submitted by the Company in full and in cleared funds within 30 days of receipt and in accordance with the credit terms as specified by the Company on their invoice.

7.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:

(a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) Suspend all Services until payment has been made in full.

7.6 Time for payment shall be of the essence of the Contract.

7.7 All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition 7.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.8 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 As between the Customer and the Company, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Company. The Company licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis only to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Company terminates the Contract under condition 13.1 or the Contract

is otherwise terminated, this licence will automatically terminate.

9. CONFIDENTIALITY AND THE COMPANY'S PROPERTY

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents or sub-contractors and any other confidential information concerning the Company's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Company, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

9.3 This condition 9 shall survive termination of the Contract, however arising.

10. LIMITATION OF LIABILITY

10.1 This condition 10 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) Any breach of the Contract;

(b) Any use made by the Customer of the Services, the Deliverables or any part of them; and

- (c) Any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions limits or excludes the liability of the Company:
- (a) For death or personal injury resulting from negligence; or
- (b) For any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company.
- 10.4 Subject to condition 10.2 and condition 10.3
- (a) The Company shall not be liable for:
- (i) Loss of profits; or
- (ii) Loss of business; or
- (iii) Depletion of goodwill and/or similar losses; or
- (iv) Loss of anticipated savings; or
- (v) Loss of goods; or
- (vi) Loss of contract; or
- (vii) Loss of use; or
- (viii) Loss of corruption of data or information; or
- (ix) Any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Subject to the provisions of clause 10.3, the total liability of either party to the other under or in connection with Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the total price of the Services.

11. DATA PROTECTION

- 11.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Company in connection with the Services.
- 11.2 The Supplied shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

12. TITLE AND RISK

- 12.1 The risk in printers and printing machinery sold by the Company to the Customer (**Goods**) shall pass to the Customer on completion of delivery.
- 12.2 Title to the Goods shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods or equipment that the Company has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums.
- 12.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Customer's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- (d) notify the Company immediately if it becomes subject to any of the events listed in clause 13.1; and
- (e) give the Company such information relating to the Goods as the Company may require from time to time.

12.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1, then, without limiting any other right or remedy the Company may have the Company may at any time:

- (a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

13. TERMINATION

- 13.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than [three] months written notice or immediately on giving notice to the other if:
- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

- (b) An order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
 - (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - (d) A receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - (e) The other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - (f) The other party ceases, or threatens to cease, to trade; or
 - (g) There is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or
 - (h) The other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 13.2 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
 - (b) The Customer shall forthwith return all of the Deliverables. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
 - (c) The accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
14. **FORCE MAJEURE**
- The Company shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.
15. **VARIATION**
- Subject to condition 6, no variation of the Contract or these Conditions or of any of the documents referred to in them (unless such documents are specifically excluded elsewhere in these terms) shall be valid unless it is in writing and signed by or on behalf of each of the parties.
16. **WAIVER**
- 16.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and
- the circumstances for which it is given.
- 16.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
17. **SEVERANCE**
- 17.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 17.3 The parties agree, in the circumstances referred to in condition 17.1 and if condition 17.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.
18. **STATUS OF PRE-CONTRACTUAL STATEMENTS**
- Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter the Contract, other than as expressly set out in the Contract.
19. **ASSIGNMENT**
- 19.1 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20. **NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

connection with the Contract or its subject matter.

Signed by
[NAME OF
DIRECTOR]

for and on
behalf of
**Durst Image
Technology
UK Limited**

.....
.....
Director

21. **RIGHTS OF THIRD PARTIES**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

Signed by
[NAME OF
DIRECTOR]

for and on
behalf of []

.....
.....

Director

22. **NOTICES**

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 21 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

23. **GOVERNING LAW AND JURISDICTION**

23.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in