

# ACORN WEB OFFSET LTD TERMS & CONDITIONS OF SALE

## 1. INTERPRETATION

In these Conditions unless the context requires otherwise any reference to the singular shall include the plural and vice versa and:  
"Customer" means the person, firm or company that has requested any Work;  
"Company" means Acorn Web Offset Ltd and its successors and assigns;  
"Conditions" means the standard terms and conditions of sale set out herein;  
"Contract" means any contract for Work;  
"Goods" means any goods supplied or to be supplied by the Company (as may be described in the Company's quote or acknowledgement of order) including the physical design work, copying, printing or other work howsoever described;  
"Insolvency" means in relation to the Customer any of the following (as relevant): the appointment of any nominee, sequestrator, trustee, supervisor, administrator, administrative receiver, receiver or liquidator pursuant to the Insolvency Act 1986; or the entry into of any compromise or arrangement with its creditors; or if it commits any act of bankruptcy; or if an order is made or effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction of a solvent company) or the appointment of a manager or receiver to the Law of Property Act 1925 or the occurrence or sufficiency of anything equivalent under any jurisdiction other than England or Wales; and "Insolvent" shall be construed accordingly;  
"IPRs" means any intellectual property rights of any nature including without limit any and all inventions, patents, utility models, design rights, copyright, know-how, trade secrets, confidential information, trade marks, (whether registered or not) service marks, trade names and goodwill or any other similar rights whether arising in the United Kingdom or elsewhere in the world;  
"Order" means an order placed by the Customer with the Company for Work;  
"Services" means any services supplied or to be supplied to the Customer by the Company (as may be described in the Company's quote or acknowledgement of order); and  
"Work" means Goods and/or Services.

## 2. FORMATION

2.1 All quotations or estimates are made and Orders are accepted subject to and shall be deemed to incorporate the Conditions and they shall apply to all Contracts to the exclusion of any other terms and conditions including without limit those which the Customer purports to apply under any Order. Variations to the terms of any Contract will only be effective if agreed in writing and signed by a duly authorised officer of the Company. Any quotation or estimate given by the Company is based on prices current at that time, is submitted subject to sight of copy, does not constitute an offer by the Company and, unless previously withdrawn by the Company, shall remain valid for a period of 15 days.  
2.2 All Orders shall be deemed to be an offer and shall only be deemed accepted by the Company upon the earlier of the issue of a written acknowledgement of order by the Company or delivery of Work.  
2.3 The Company may modify the specification of Goods or Services without notice provided that such modification does not materially affect the Services or the performance of the Goods. The Contract is not a contract for sale of goods by description. All descriptive matter, specifications and advertising issued by the Company is solely aimed at giving an approximate idea of the Work described in them, they will not form part of the Contract.  
2.4 Any Order accepted by the Company may only be cancelled or varied by the Customer with the prior written consent of the Company and on terms that the Customer shall indemnify the Company in full against all losses (including loss of profit in the ordinary course of business), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such cancellation or variation.

## 3. DELIVERY AND NON-DELIVERY

3.1 Delivery times/dates named/accepted by the Company are given in good faith but are an estimate only. Time of delivery of Goods or provision of Services is not of the essence. Subject to Condition 9.1, the Company shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by failure (for any reason) to meet the delivery time/date stated/agreed (even if caused by the Company's own negligence), further, the Customer shall have no right to cancel the Contract in the event of such a failure.  
3.2 Work will be provided and Goods delivered as stated in the Company's quotation or acknowledgement of order or if one is not issued as agreed by the Company. Delivery shall be deemed to take place when the Goods arrive at the place stated in the Company's acknowledgement of order or if one is not issued at such place as is agreed by the Company except that delivery to a carrier for the purpose of transmission to the Customer shall be deemed to be delivered to the Customer. Section 32(2) of the Sale of Goods Act 1979 shall not apply. Where Work is delivered to the Customer, by ISDN or via the Internet or similar electronic medium, Work shall be deemed delivered on transmission by the Company.  
3.3 Goods sent by conventional means will be packed so as to adequately protect against damage in normal conditions of transit of usual duration. The Company shall make such arrangements for carriage of the Goods and their insurance during carriage as it thinks appropriate and the Customer shall indemnify the Company against all costs and/or expenses that the Company incurs in arranging for carriage and insurance of the Goods (including without limit, export and/or import duties and costs of packaging, loading and/or unloading), such costs and/or expenses to be paid by the Customer when it is due to pay for the Work.  
3.4 The Company may deliver Goods in instalments and perform Services in sections in any sequence. Deliveries of further instalments and performance of further sections may be withheld until the Goods and/or Services comprised in earlier instalments and/or sections have been paid for in full. Default by the Company, howsoever caused, in respect of one or more instalments shall not entitle the Customer to terminate the relevant Contract as a whole.  
3.5 If the Customer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order, or the Company agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Customer; or the Customer fails to provide any instructions consents or authorisations required to enable the Goods to be delivered on the due date; then risk in the Goods shall pass to the Customer, delivery of the Goods shall be deemed to have taken place and the Company may store or arrange for storage of such Goods and charge the Customer for all related costs and expenses (including storage and insurance) and may sell such Goods after 28 days after such failure or refusal and deduct any monies payable to the Company by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall below the Contract price.  
3.6 Upon delivery to the Customer, all Goods should be examined. The Company shall not be liable for any shortages in, or non-delivery of, Goods unless the same is notified by the Customer to the Company (together with all specific details) in writing within 10 days of the actual or anticipated date of delivery (as relevant). Subject to such notice being provided the Company shall, if it is satisfied that any Goods have not been delivered and the cause thereof being beyond the reasonable control of the Company, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Customer for such Goods. Shortages in, or non-delivery of some or part of the Goods shall not affect the Contract in respect of the other parts of the Goods.

## 4. FORCE MAJEURE

In the event that the Company is prevented or delayed in or from carrying out its obligations under the Contract as a result of any cause beyond its control such as but not limited to: acts of God; governmental intervention or restriction, import or export regulations; war; riots, strikes or other disputes (including by and with the Company's own employees); power failure; power outages; inadequate performance of, failure of or incorrect processing by computer systems or the Internet; fire; flood; default of suppliers or sub-contractors, or breakdown of plant, machinery or vehicles then the Company shall be relieved of its obligations and liabilities under the Contract for as long as such fulfillment is prevented.

## 5. RISK/TITLE

5.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery or at the notified time for delivery if the Customer fails for whatever reason to take delivery of the Goods at the notified time. Section 20(2) Sale of Goods Act 1979 shall not apply.  
5.2 Title to the Goods (both legal and equitable) shall remain with the Company until full payment with cleared funds of all monies due from the Customer to the Company under all contracts between the Company and the Customer has been made, or title is properly vested in some other person by the operation of any statute.  
5.3 Until title to the Goods passes, the Customer shall hold the Goods on a fiduciary basis as the Company's bailee and must store the Goods (at no cost to the Company) such that they are easily identifiable as the property of the Company and must not destroy or deface any identifying marks on the Goods or their packaging; and must keep the Goods insured on the Company's behalf for the full price of the Goods against "all risks" to the reasonable satisfaction of the Company and produce the policy of insurance (together with any premium receipts) to the Company upon request and must hold all proceeds of such insurance on trust for the Company and shall not mingle them with any other money nor pay the proceeds into an overdraft bank account.  
5.4 Until title to the Goods passes, the Customer shall still be entitled to re-sell, use or otherwise dispose of the Goods in the ordinary course of its business provided that the Customer shall ensure that the entire proceeds arising by virtue of any such sale, use or disposal shall be held in trust for the Company and shall not be mixed with any other monies or paid into any other overdraft bank account and shall at all times be identifiable as monies belonging to the Company.  
5.5 Once payment becomes due, the Company may while the owner of the Goods (without prejudice to its other rights) demand the immediate return of the Goods at any time and the Customer must comply with (and bear the cost of) such demand immediately. If the Customer fails to return such Goods, the Company or its successors in title, and their respective employees and agents, may enter the Customer's premises (with or without vehicles) during normal business hours to remove the Goods (the cost of which shall be borne by the Customer) and/or may sell or otherwise deal with the Goods.

## 6. PRICE

6.1 Unless fixed prices have been agreed in writing by the Company all prices are subject to alteration without notice and will be invoiced at the price ruling at the date of despatch of Goods or performance of Services.  
6.2 Unless otherwise agreed in writing by the Company prices set out on any of the Company's price lists, quotations and acknowledgement of order are exclusive of any value added, purchase or other taxes and any costs of carriage, package and insurance which shall be payable in addition to the price when the price is due.  
6.3 The Company reserves the right to increase any part of the price:  
(a) if the Customer's instructions and requirements are unclear so the Company has to produce additional proofs;  
(b) if the work provided by the Customer is of poor quality or illegible copy; or  
(c) to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company including, without limitation, increases in the cost of labour or materials or changes in delivery dates or quantities requested by the Customer.

## 7. PAYMENT

7.1 Subject Clause 7.2, the price for the Work is payable in full prior to the Company commencing the performance of the Contract, and the Company shall be under no obligation to perform the Contract or take any preparatory steps in respect of the Contract unless and until the price is paid.  
7.2 The Company may at its sole discretion agree to grant the Customer a credit account facility. Any such agreement shall only be valid if confirmed in writing by a duly authorised officer of the Company. In any event, the Company may at its sole discretion amend the terms of or withdraw such credit facility at any time by notice in writing with immediate effect. If the credit account facility is so withdrawn, all amounts due or accruing under any Contract shall become immediately due and payable.  
7.3 Payment shall only be deemed received by the Company from the Customer upon receipt by the Company of cleared funds. Payment shall be made in full without any deduction, set off or abatement on any grounds. The Company may appropriate any payments made by the Customer to any outstanding invoice. The Company may bring an action for the price of the Goods even though the property in them may not have vested in the Customer.  
7.4 Time for payment of the Contract price shall be of the essence. The Customer shall indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts. Interest shall be payable by the Customer on overdue amounts (before as well as after judgement) at the annual rate of 8 percent above the base lending rate of The Royal Bank of Scotland plc from time to time on the outstanding amount until the Contract price and/or any ancillary costs and/or charges are paid in full. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.  
7.5 Notwithstanding the grant by the Company of any credit account facility, the Company may prior to the commencement of the Contract and at anytime thereafter require the Customer in writing to pay a deposit to the Company by way of security for the performance of the Customer's payment obligations pursuant to the Contract. Payment of any such deposit shall be in addition and without prejudice to the obligation of the Customer to pay the Contract price and any other ancillary costs and/or charges in accordance with this Condition. Failure by the Customer to pay such deposit upon request shall entitle the Company to suspend or not commence performance of the Work.

## 8. WARRANTY

The Customer is relying on its own skill and judgement in relation to the Work irrespective of any knowledge of the Company or its servants, agents or employees or as to the purpose for which the Work is supplied or its suitability.  
8.2 The Customer represents and warrants that:  
(a) the Customer has the power and authority to enter into this Contract;  
(b) the use by the Company of any IPRs, designs, specifications, drawings or other materials or information of any nature provided to the Company pursuant to the Contract shall not infringe any third party's IPRs. If any claim is brought or threatened against the Company in respect of such an infringement, the Company shall be entitled to suspend carrying out further Services to the Customer, and the Customer shall indemnify the Company against all actions, claims, costs, demands, expenses and liabilities of whatsoever nature suffered or incurred by the Company as a result of any such claim or threatened claim brought against the Company;  
(c) all material and/or information supplied to the Company by the Customer:  
(i) does not contain any material of an illegal, defamatory or obscene nature or material which would or may contravene any applicable law and if in the opinion of the Company any material supplied by the Customer is of an illegal, defamatory or obscene nature it will not be printed by the Company;  
(ii) shall be accurate clear and legible and if any such material or information supplied by the Customer is not accurate, clear or legible, the Company reserves the right to charge the Customer for any additional work involved on a time and materials basis in accordance with the Company's then current charges;  
(iii) which contain the name or pictorial representation (photographic or otherwise) of any living person and/or any part of any living person and/or any copy by which any living person can be identified, the Customer has obtained the author's or such living person's to make use of such name, representation and/or copy.  
8.3 The Customer indemnifies the Company and agrees to keep the Company indemnified against all claims, costs (including, without limit, all costs incurred in defending any claims or actions brought by third parties) proceedings, demands, losses, damages and expenses or liability whatsoever arising directly or which are reasonably foreseeable as a result of any breach or non-performance of any of the representations, warranties or other terms contained in these Conditions or implied by law.  
8.4 Subject to Conditions 8.1 and 8.5 the Company warrants that all Goods shall upon delivery be of satisfactory quality and be reasonably fit for the purpose for which they are required (as notified by the Customer in writing to the Company) and that all Services shall be carried out with reasonable skill and care and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with this Condition 8.4, are hereby expressly excluded to the fullest extent permitted by law.  
8.5 The warranty given in Condition 8.4 will not apply:  
(a) where the defect complained of arises from any drawing, design, specification or IPR supplied by the Customer or arises from fair wear and tear, willful damage, the Customer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without the Company's approval or arises from any failure to follow the Company's instructions (whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Goods), or misuse or alter or repair of the Goods without the Company's approval;  
(b) if the Company or its agents is not given a reasonable opportunity to safely inspect the Work;  
(c) if the total price for the Goods or Services has not been paid by the due date for payment;  
(d) to any parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer of the Goods to the Company; and/or  
(e) unless the Customer gives written notice of the defect to the Company within 10 days of delivery or, if the defect would not be apparent on reasonable inspection, within 10 days of when the Customer discovered or ought to have discovered the defect.  
8.6 The obligations of the Company under the Contract are limited such that in the event of a breach by the Company of the warranty in Condition 8.4 or any defect in any Goods or Services the Company shall only be obliged (and shall have no further liability in contract, tort or otherwise for any defect in quality of the Goods and/or Services or fitness for purpose of the Goods) at its option either to credit the price (if already paid) attributable to the faulty Goods or Services or repair, rectify or replace the faulty Goods or Services provided that such Goods are returned to the Company in their delivered state at the Customer's expense if so requested by the Company

## 9. LIABILITY

9.1 Nothing in these Conditions shall exclude or limit the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.  
9.2 The Company shall not be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise however and willful damage, the Customer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods in the ordinary course of business, business contracts, revenues or anticipated savings, or (ii) for damage to the Customer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.  
9.3 Without prejudice to Conditions 8.6, 9.1 and 9.2 the Company's liability in contract tort, (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall be limited to the greater of the Contract price or the amount received by the Company for the claim under its insurance policy covering such risks provided that nothing in this Condition shall oblige the Company to obtain any insurance or claim upon any insurance which it holds. The Customer acknowledges that delay in notifying any claim may prevent the Company recovering any money under such policy.  
9.4 The Company shall not be liable for any loss of copy, artwork, photographs or other materials, copies of which the Customer warrants to have retained in sufficient quality and quantity for whatever purpose.  
9.5 The Company shall endeavour to keep the Customer's property in good order (subject to such wear and tear as may be incurred in the course of carrying out the Work) but remains at the Customer's risk. Liability for damage to or destruction of such property is excluded except where such damage or destruction is caused by the Company's negligence.  
9.6 Nothing in these Conditions shall be construed as a representation or warranty by the Company that the design, manufacture, use or sale of the Goods or the provision of the Services is not an infringement of any third party's IPRs.

## 10. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

10.1 Copyright for all purposes in artwork, copy photographs and other materials produced, modified or substantially reworked by the Company shall vest in the Company.  
10.2 The Customer shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to Work, or any plans, descriptions, blue-prints, designs, technical information documents, drawings and/or specifications relating thereto either (a) supplied by the Company to the Customer in connection with Work, or (b) resulting from Work, unless otherwise expressly agreed by the Company in writing. If the Customer shall in any way acquire any such rights then the Customer shall immediately inform the Company and shall forthwith take such steps as may be required by the Company to assign such rights or vest such title in the Company.  
10.3 The Company shall have the right to apply any trade marks, trade names and/or service marks to the Goods. The Customer acknowledges that no rights are granted to the Customer by the use by the Customer of such trade marks, trade names and/or service marks. The Customer shall not deface, remove or obliterate any trade marks, trade names or logos applied by the Company on or in relation to the Goods.  
10.4 Where the Goods are not manufactured or supplied by the Company, the Company gives no assurance or guarantee that the sale or use of the Goods will not infringe the IPRs of any third party.  
10.5 The Customer shall keep confidential and not use, without the prior written consent of the Company, all or any information including without limit, those (as referred to in Condition 10.2) supplied by the Company to the Customer or disclosed to or obtained by the Customer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that such information is or becomes public through no fault of the Customer, or disclosure of the same is required by law or by any other governmental or other regulatory body.

## 11. TERMINATION

11.1 Without prejudice to any of its other rights the Company may immediately terminate the Contract and demand payment of any amount due or accruing to the Company whether under the Contract or otherwise, re-sell the Goods and/or withhold or cancel any deliveries if any of the following occurs or is likely to occur:  
(a) the Customer is in breach of any of its obligations under the Contract which, if capable of remedy, the Customer has not remedied within 30 days of receiving written notice from the Company; or  
(b) the Customer is or becomes insolvent or the Customer suffers a distress or execution or other legal process to be levied or enforced or sued upon or against any part of the property, assets or revenue of the Customer which is not discharged or stayed within 7 days or the Customer ceases or threatens to cease to carry on business.

## 12. GENERAL

**Customer's Property**  
12.1 The Company may reject any paper, plates or other materials supplied or specified by the Customer which appear to the Company to be unsuitable. Any additional cost incurred if the materials are found to be unsuitable during production may, at the discretion of the Company, be charged to the Customer.  
12.2 Where materials are so supplied or specified, the Company will use its reasonable endeavours to secure the best results, but the Company is not responsible for imperfect work caused by defects in or unsuitability of materials so supplied or specified.  
12.3 Quantities of materials supplied by the Customer shall be adequate to cover normal spoilage.  
**Periodical Publications**  
12.4 A Contract for the printing of a periodical publication may not be terminated by either party unless:  
(a) 13 weeks' notice in writing is given in the case of periodicals produced monthly or more frequently; or  
(b) 26 weeks' notice in writing is given in the case of other periodicals.  
Notice may be given at any time but wherever possible should be given after completion of work on any issue.  
This condition is without prejudice to the Company's rights to terminate the Contract under Condition 11.  
**Proofs**  
12.5 Proofs of all work may be submitted for the Customer's approval and the Company shall incur no liability for any errors not corrected by the Customer in sub-proofs. The Company reserves the right to charge extra for any additional proof necessitated by the Customer's alterations. When style, type or layout is left to the Company's judgement, the Company reserves the right to charge extra for any changes made by the Customer.  
**Notices**  
12.6 Any notice to be served under these Conditions shall be sent by pre-paid recorded delivery or registered post or by facsimile transmission and shall be deemed to have been received by the addressee within two days of posting or at the end of the relevant transmission if sent by facsimile transmission to the correct facsimile number of the addressee.  
12.7 The Customer shall give notice to the Company of the change or acquisition of any address or facsimile or similar number at the earliest opportunity but in any event within 72 hours of such change or acquisition.  
**Waiver**  
12.8 The failure to exercise or delay in exercising by the Company of a right or remedy provided by the Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.  
**Assignment**  
12.9 The Customer shall not be entitled to assign or sub-contract any of its rights or obligations under the Contract, without the prior written consent of the Company. The Company may assign, license or sub-contract all or any part of its rights or obligations under the Contract without the Customer's consent.  
**Entire Agreement**  
12.10 The Conditions contain the whole agreement between the Company and the Customer. All other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law.  
**Law**  
12.11 The Contract shall be construed in accordance with and governed in all respects by English Law and the Customer submits to the exclusive jurisdiction of the English Courts.  
12.12 The Customer shall be responsible for complying with all relevant laws, bylaws, regulations, orders, directions, codes of practice or requirements of any statutory, public, local or other competent authority or court of competent jurisdiction applicable to the storage, sale, marketing, provision and use of the Work.