



Mailroom

**MAILROOM SOLUTIONS TERMS AND
CONDITIONS OF BUSINESS**

Version 1 – May 2023

The Customer's attention is particularly drawn to the provisions of clause 12.

1. **Interpretation**
- 1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day, means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Customer, means the person or firm who enter into an arrangement to purchase Equipment and/or Services from the Supplier as set out in the Sales and Service Order Form.

Customer Default has the meaning set out in clause 8.2.

Commencement Date has the meaning set out in the Sales and Service Order Form.

Conditions, means these terms and conditions as amended from time to time in accordance with clause 16.7.

Contract, means the contract between the Supplier and the Customer for the Supply of Equipment and/or Services in accordance with these Conditions and the Sales and Service Order Form if and as may be signed by the Customer from time to time and the signing of the Sale and Service Order Form and/or delivery of the Equipment and/or Services by the Supplier to the Customer shall be deemed to be unconditional acceptance by the Customer of these Conditions and the Sale and Service Order form.

Contract Period, means the Initial Term and, where applicable, each and every 12 months Rollover Contract.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures, as defined in the Data Protection Legislation.

Data Protection Legislation, means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Deliverables, means all documents, products and materials of or developed by the Supplier or its agents, the Customers and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports including drafts, tools and Equipment.

Delivery Location has the meaning set out in clause 4.1.

Equipment, means the equipment, or any part of them, set out in the Sales and Service Order Form.

Equipment Lease Arrangement, means any arrangement for the leasing of Equipment entered into by the Customer and a third party;

Equipment Specification, means any specification for the Equipment, including any relevant plans or drawings, that is agreed in the Sales and Service Order Form or writing by the Customer and the Supplier from time to time.

Force Majeure Event has the meaning given to it in clause 15.1.

Initial Term, means the initial term of the Contract as set out in the Sales and Service Order Form

Intellectual Property Rights, means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information including know-how, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Rollover Contract, means the Contract after the end of the Initial Term which shall automatically renew for a further Rollover Contract Period and shall continue to automatically renew at the end of each Rollover Contract Period until terminated by either party in accordance with this Contract and clause 13.1.3 in particular.

Rollover Contract Period, means the 12 month period of a Rollover Contract which shall automatically renew for further 12 month periods each time it comes to an end unless terminated in accordance with Clause 13.1.3

Sales and Service Order Form, means the form to be prepared by the Supplier and completed and signed by the Customer and, in the absence of such form, the specifications as shall be agreed between the Supplier and the Customer in writing from time to time.

Services, means the services, including the Deliverables, provided by the Supplier to the Customer as set out in these Conditions, the Sales and Service Order Form and/or in writing from time to time.

Settlement Fee, means the fee to be paid by the Customer to the Supplier in accordance with Clause 13.1.2.

Supplier, means **ITDS MAILROOM SOLUTIONS LIMITED** registered in England and Wales whose registered address is 28 Fourth Ave, Hove BN3 2PJ and company number 10549547

Supplier Materials has the meaning set out in clause 8.1.7.

Support Request, means request made by the Customer in accordance with this Contract, including correction of a Customer Default.

Warranty Period has the meaning set out in clause 5.1.

UK Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.2 **Construction.** In these Conditions, the following rules apply:
 - 1.2.1 a **person** includes a natural person, corporate or unincorporated body whether or not having separate legal personality;
 - 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
 - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory 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;
 - 1.2.4 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; and
 - 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.
2. **Basis of contract**
- 2.1 The signed Sales and Service Order Form or, if no Sales and Service Order Form was completed and/or signed, the supply of the Services and/or the ordering of Equipment constitute an offer by the Customer to purchase Equipment and/or Services in accordance with these Conditions.
- 2.2 The offer to purchase the Equipment and/or Services from the Supplier shall be deemed to be accepted and the Contract shall come into existence on the Commencement Date as indicated in the Sale and Service Order Form or, in the absence of a Sale and Service Order Form, signed or otherwise, on the date in which the Supplier performed any act in the provision of any of the Services.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier is only valid for a period of 20 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.
3. **Equipment**
- 3.1 The Equipment is described in the Sales and Service Order Form.
- 3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Equipment Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Equipment Specification if required by any applicable statutory or regulatory requirements.
- 3.4 The Supplier is not and shall not be party to any Equipment Leasing Arrangement and the Supplier shall have no liability to the Customer in respect of such Equipment Leasing Arrangement.
4. **Delivery of Equipment**
- 4.1 The Supplier shall deliver the Equipment to the location set out in the Sales and Service Order Form or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Equipment is ready.
- 4.2 Delivery of the Equipment shall be completed on the completion of loading of the Equipment at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Equipment is approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 4.4 If the Customer fails to accept or take delivery of the Equipment within five Business Days of the Supplier notifying the Customer that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:
 - 4.4.1 delivery of the Equipment shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and
 - 4.4.2 the Supplier shall store the Equipment until delivery takes place and charge the Customer for all related costs and expenses including insurance.
- 4.5 If within five Business Days after the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 4.6 The Customer shall not be entitled to reject the Equipment if the Supplier delivers only part of it.
5. **Quality of Equipment Purchased**
- 5.1 When the Customer purchases the Equipment outright from the Supplier, the Supplier warrants that on delivery, and for a period specified by the manufacturer's warranty, the Equipment shall:
 - 5.1.1 conform in all material respects with their description and any applicable Equipment Specification; and
 - 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
 - 5.2.1 the Customer gives notice in writing (during the warranty period) within a reasonable time of discovery that some or all of the Equipment does not comply with the warranty set out in clause 5.1;
 - 5.2.2 the Supplier is given a reasonable opportunity of examining such Equipment; and
 - 5.2.3 the Customer, if asked to do so by the Supplier, returns such Equipment to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.
- 5.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty in clause 5.1 if:
 - 5.3.1 the Customer makes any further use of such Equipment after giving notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or if the Customer's acts or omissions were against best trade practice;
 - 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Equipment Specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Equipment without the written consent of the Supplier; and
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier under clause 5.2.
6. **Title and risk**
- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Title to the Equipment shall not pass to the Customer:
 - 6.2.1 until the Supplier receives payment in full for the purchase of the Equipment and any other equipment that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Equipment shall pass at the time of payment of all such sums;
 - 6.2.2 where the Customer is renting the Equipment from the Supplier.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
 - 6.3.1 store the Equipment separately from all other equipment held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
 - 6.3.3 maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.13; and
 - 6.3.5 give the Supplier such information relating to the Equipment as the Supplier may require from time to time.
- 6.4 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.13, then, without limiting any other right or remedy the Supplier may have:
 - 6.4.1 the Customer's right to resell Equipment or use them in the ordinary course of its business ceases immediately; and
 - 6.4.2 the Supplier may at any time:
 - (a) require the Customer to deliver up all Equipment in its possession which 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 Equipment is stored in Sales and Service Order Form to recover them.

- 7. Supply of Services**
- 7.1** The Supplier shall provide the Services to the Customer.
- 7.2** The Supplier will provide operator training and routine maintenance and repair to the Equipment between 9.00am and 5.00pm (Monday to Friday not including Bank Holidays). Charges will be applied outside these times at the Supplier's going rate at the time.
- 7.3** The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Sales and Service Order Form, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.4** The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.5** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.6** The Customer may request support Services by way of a Support Request and each Support Request shall include a description of the fault and the start time of the incident.
- 7.7** The Customer shall provide the Supplier with such output and other data, documents, information, assistance and subject to compliance with all Customer's security and encryption requirements notified to the Supplier in writing remote access to the Customer's system, as are reasonably necessary to assist the Supplier to reproduce operating conditions similar to those present when the Customer detected the relevant fault and to respond to the relevant Support Request.
- 7.8** The Customer acknowledges that, to properly assess and resolve Support Requests, it may be necessary to permit the Supplier direct access at the Customer Site to the Customer system and the Customer's files, equipment, Equipment and personnel and the Customer shall provide such access promptly, provided that the Supplier complies with all the Customer's security requirements and other policies and procedures relating to contractors entering and working on the Customer Site notified to the Supplier.
- 7.9** The Supplier shall prioritise all Support Requests based on its reasonable assessment of the severity level of the fault reported and respond to all Support Requests as set out in the this clause 7.
- 7.10** The Supplier will supply standard toner and franking machine use ink cartridges for use in the Equipment. If toner is not included it must be purchased from the Supplier, as must all other device consumables to ensure proper maintenance and performance of the Equipment.
- 7.11** If the Customer has been provided with a discounted consumables rate, as set out in the Sales and Service Order Form, the Customer agrees to accept a minimum of one delivery per annum for any items of which the discounted rate has been agreed. The Customer acknowledges, that should it not place one delivery per annum in accordance with this clause 7.11 then the Supplier reserves the right to make a minimum charge of 75% of the value of the items.
- 7.12** Subject to clause 7.13 and 7.14, the Supplier's routine Equipment service and support will include all standard parts, labour, callout charges, and preventative maintenance when required as per the manufacturer's guidelines. The Supplier reserves the right to request the Equipment to be returned to its registered office in order for it to carry out any maintenance and repair under this clause 7.12, where necessary.
- 7.13** The Supplier reserves the right to charge additional support fees for Support Requests, including but not limited to all parts, labour, callout charges and preventative maintenance, where such Support Request is due to the Customer's Default or where there is a fault with a third-party system or equipment not provided by the Supplier.
- 7.14** If in the Supplier's opinion, normal repairs and replacement parts, in accordance with clause 7.12 will not keep the Equipment in satisfactory condition, the Supplier will give the Customer a written estimate of costs bringing the Equipment to this satisfactory condition or replacement. If accepted by the Customer such costs will be in addition to the charges set out in clause 9.
- 7.15** Where possible the Supplier will install remote diagnostics software to monitor the status of the device and provide proactive service and support.
- 7.16** The Supplier's routine response time is based on an average 4 working hours for Equipment and 8 working hours for software.
- 7.17** Where appropriate the Supplier reserves the right to provide support through a third-party service providers or contractors.
- 8. Customer's obligations**
- 8.1** The Customer shall:
- 8.1.1** ensure that the terms of the Sales and Service Order Form and if submitted by the Customer the Equipment Specification are complete and accurate;
- 8.1.2** co-operate with the Supplier in all matters relating to the Services;
- 8.1.3** provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- 8.1.4** keep the Supplier updated as to the location of the Equipment;
- 8.1.5** provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 8.1.6** prepare the Customer's premises for the supply of the Services
- 8.1.7** obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 8.1.8** keep and maintain all materials, Equipment, documents and other property of the Supplier at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- 8.1.9** make payments on time in accordance with Clause 9 below;
- 8.1.10** ensure that all postal tariff software is kept up to date and that the Equipment displays and franks all current Royal Mail prices;
- 8.1.11** ensure there is an appropriate IT infrastructure that is required for the Supplier to perform the Services and install the Equipment; and
- 8.1.12** ensure no peripherals or third-party Equipment and software may be attached or embedded to any machine supported by the Supplier without written authorisation by the Supplier.
- 8.2** The Customer acknowledges that in the event of continual excessive use of the equipment beyond that for which it was designed, the Supplier reserves the right to make such increase to the charges set out in the Sales and Service Order Form as is reasonable in the circumstances or shall provide a written estimate as to a suitable replacement.
- 8.3** The Customer acknowledges if meter usage exceeds the stated letter volumes or postage spend (specified in the Sales and Service Order Form, Service Agreement - Mailroom Solutions), the Supplier reserves the right to charge the Supplier's then current charge for such excess usage. It is the responsibility of the Customer to monitor usage and notify the Supplier of any excess usage.
- 8.4** If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation, including but not limited to any damage by negligence, accident or misuse or the Customer does not follow the manufacturer's instructions including, but not limited to, excess usage in accordance with clause 8.2 and 8.3 and over and above manufacturer's specification, then:
- 8.4.1** the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 8.4.2** the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.4.3** the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 8.4.4** the supplier shall charge for any work required to be carried out, including but not limited, for any parts or replacement Equipment as may be necessary, at its going rate as relevant at the time.
- 9. Charges and payment**
- 9.1** The price for Equipment shall be the price set out in the Sales and Service Order Form or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. Unless agreed otherwise in writing, the price of the Equipment is inclusive of all costs and charges of packaging, insurance, transport of the Equipment.
- 9.2** The charges for Services shall be on a time and materials basis:
- 9.2.1** the charges shall be calculated in accordance with the Supplier's fee rates, as set out in the Sales and Service Order Form;
- 9.2.2** the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials;
- 9.2.3** a minimum charge of £20 per calendar month shall be applied for each mono and colour meter on all Equipment supplied by the Supplier or where the Supplier provides Services to the Customer where the Equipment was not supplied by the Supplier;
- 9.2.4** a minimum monthly charge of £25 for mono equipment and £35 for colour equipment shall be applied, except where the item of Equipment is a non-print charge equipment in which case a minimum charge of £125 per annum will be levied in respect of Royal Mail annual inspection charge;
- 9.2.5** metered Equipment that is on toner inclusive agreements may bear a charge for toner supplied over and above the recommended yield as stated by the manufacturers or based on 25% coverage for colour and 6% coverage for black;
- 9.2.6** when the scanning volume is equal to or more than 50% of the printing volume, an additional charge will be made for any spare parts and any repair work as may be required.
- 9.3** Unless agreed otherwise between the parties, all postal rate updates are chargeable and are not included in the Contract. Any Customer by virtue of signing this Contract automatically agrees to accept all postal rate updates at the prevailing cost from the date of installation until such time as the Equipment is de-commissioned, regardless of whether the Customer has a maintenance agreement in place
- 9.4** The Supplier reserves the right to increase its standard rates for the charges for the Services as set out in the Sales and Service Order Form, provided that such charges cannot be increased more than once in any 12-month period and by no more than the Maximum Service Cost Increase stated in the Sales and Service Order Form.
- 9.5** In respect of Equipment, the Supplier shall invoice the Customer in accordance with the Sales and Service Order Form.
- 9.6** The Customer shall pay each invoice submitted by the Supplier:
- 9.6.1** within the number of days as stipulated in the Sales and Service Order Form; and
- 9.6.2** in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 9.7** The Customer shall sign up for payment by direct debit if requested by the Supplier. The Customer agrees to accept a 5% surcharge if they would like to continue to pay by other means having been requested to sign up for payment by direct debit.
- 9.8** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.
- 9.9** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Natwest Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.10** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 9.11** The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses, including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs or expenses incurred by the Company arising out of or in connection with the enforcement of this agreement or the recovery of payment in accordance with this clause 9 or clause 13.1.2.
- 10. Intellectual property rights**
- 10.1** All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 10.2** The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3** All Supplier Materials are the exclusive property of the Supplier.
- 11. Confidentiality**
- A party (receiving party) 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 receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.
- 12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 12.1** Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 12.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 12.1.2** fraud or fraudulent misrepresentation;
- 12.1.3** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 12.1.4** breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 12.1.5** defective products under the Consumer Protection Act 1987.
- 12.2** Subject to clause 12.1:
- 12.2.1** the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort including negligence, breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract or any Equipment Leasing Arrangement; and
- 12.2.2** the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort including negligence, breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Customer to the Supplier in the previous 12 months.
- 12.3** The terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 and the terms implied by sections 3 to 5 of the Supply of Equipment and Services Act 1982 are, to the fullest

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extent permitted by law, excluded from the Contract.

This clause 12 shall survive termination of the Contract.

Termination

Without limiting its other rights or remedies and at all times subject to clause 13.3:

13.1.1 During the Contract Period, either party may, subject to the provision of 13.1.2 below, terminate the Contract by giving the other party no less than six months' written notice;

13.1.2 if the termination notice provided by the Customer in accordance with Clause 13.1.1 terminates the Contract before the end of the Contract Period as stipulated in the Sales and Service Order Form, then the Customer shall pay the Supplier a Cancellation Fee in respect of the Franking Equipment and a Settlement Fee in respect of the Printing Equipment, as follows:

Period remaining when notice to terminate expires during Contract Period	Early settlement discount	Calculation
36 months +	50%	Average spend per month or minimum contracted spend whichever is greater, multiplied by the number of outstanding months, minus early settlement discount. (includes any scheduled price increases)
24-36 months	35%	
12-24 months	15%	
0-12 months	0%	

13.1.3 At the end of the Initial Term, and absent of any notice of termination in accordance with Clause 13.1.1, the Contract shall automatically become a Rollover Contract for a Rollover Period and shall automatically renew at the end of the first Rollover Period and each successive Rollover Contract Period thereafter. Either party may terminate the Contract at the end of the Rollover Contract Period at the time by giving written notice no less than 6 months' prior to the end of that Rollover Contract Period.

13.2

Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within five Business Days after receipt of notice in writing to do so;

13.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or being a company or limited liability partnership is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or being an individual is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or being a partnership has any partner to whom any of the foregoing apply);

13.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where a company for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party);

13.2.4 a petition is filed, a notice is given, a resolution is passed, or an Sales and Service Order Form is made, for or in connection with the winding up of the other party being a company other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

13.2.5 the other party being an individual is the subject of a bankruptcy petition or Sales and Service Order Form;

13.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days;

13.2.7 an application is made to court, or a Sales and Service Order Form is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party being a company;

13.2.8 the holder of a qualifying charge over the assets of the other party being a company has become entitled to appoint or has appointed an administrative receiver;

13.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

13.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.2 to clause 13.2.9 inclusive;

13.2.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

13.2.12 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

13.2.13 the other party being an individual dies or, by reason of illness or incapacity whether mental or physical, is incapable of managing his own affairs or becomes a patient under any mental health legislation.

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Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

On termination of the Contract for any reason:

13.5.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

13.5.2 the Customer shall return all of the Supplier Materials, Deliverables and any Equipment which have not been fully paid for and the courier must be authorised in writing by the Supplier. The Customer acknowledges that it shall be wholly liable for any damage caused by a courier not approved by the Supplier. If the Customer fails to return the Supplier Materials, Deliverables and Equipment, then the Supplier may enter the Customer's premises and take possession of them and reserves the right to charge the Customer no less than £200.00 (+VAT) for the insured collection and delicensing and disposal of the Equipment. Collections will be made with ten days' notice to the Customer and failed collections will be charged at £75.00 (+VAT) per collection attempt. Invoices must be cleared prior to collection being authorised. Failure to clear the invoice may result in a £25.00 per week holding charge being imposed. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract. For the avoidance of doubt should the Customer have lost or damaged any Supplier Materials, Deliverables, or Equipment then the Supplier shall be entitled to charge the whole amount under the Contract as set out in the Sale and Service Order Form the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

13.5.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

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Data Protection

For the purposes of this clause 14 the terms Controller, Processor and/or Personal Data shall be construed as defined in the Data Protection Legislation.

Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. Full details of the Suppliers Data Protection Policy can be found on the website. (https://itdocumentsolutions.com/downloads/Data_Protection_Policy)

Without prejudice to the generality of clause 14.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of this agreement.

Without prejudice to the generality of clause 14.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement ensure that it processes Personal Data only on the documented written instructions of the Customer (unless otherwise required by law) and in accordance with the Data Protection Legislation.

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Force majeure

For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes whether involving the workforce of the Supplier or any other party, failure of a utility service or transport network, act of God, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental measures, Sales and Service Order Form, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Equipment for more than five weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

This Clause 15 shall not apply to the Customer's obligations under Clause

General

Assignment and other dealings.

16.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

16.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

Notices

16.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office if it is a company or its principal place of business in any other case or such other address as that party may have specified to the other party in writing in accordance with this clause and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

16.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

16.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

Severance

16.3.1 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.

16.3.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

Entire agreement

16.8.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.8.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

16.8.3 Nothing in this clause shall limit or exclude any liability for fraud.

Governing law. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the law of England and Wales.

Jurisdiction Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation including non-contractual disputes or claims.

