

STANDARD TERMS AND CONDITIONS OF ES Print Limited (“ES Print”)

1. Definitions

In these terms and conditions: “Agreement” means an agreement between ES Print Solutions and the customer for the provision of the Services; “Customer” means the person or company entering into an Agreement with ES Print Solutions; “Force Majeure” means any occurrence beyond the control of the parties including (without limiting the foregoing) act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other industrial action or dispute; “Order” means the customer’s order for the provision of Services by ES Print Solutions from time to time and any subsequent orders received by ES Print Solutions from the customer to which these Terms and Conditions shall apply; “Services” means the provision of print, artwork, design, display, point of sale and other advertising, copywriting and related consultancy and advice including any goods or materials in connection therewith; “Specified Services” means the Services to be supplied by ES Print Solutions to the customer pursuant to an Order.

2. Applicability

These standard Terms and Conditions shall apply to each and every Agreement between ES Print Solutions and the customer to the exclusion of all other terms and conditions.

3. Orders

3.1 ES Print Solutions reserves the right to decline or to accept any Order.

3.2 ES Print Solutions may decline to accept any Order unless signed by a duly authorised person on behalf of the customer.

3.3 No contract for any Order may be concluded on behalf of ES Print Solutions by means of e-mail communication.

4. Cancellation

4.1 Any order for the processing of a periodical publication may not be cancelled by either party unless 13 weeks notice in writing is given in the case of periodicals produced monthly or more frequently or 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 one issue.

4.2 The customer shall not be entitled to cancel any other order after the same has been accepted by ES Print Solutions save on terms expressly agreed by ES Print Solutions in writing.

5. Preliminary Work

Unless otherwise agreed in writing any preliminary work whether experimental or otherwise carried out at the customer’s request shall be charged.

6. Delivery

6.1 Charges include delivery unless otherwise stated.

6.2 Claims arising from loss, damage or delay in transit must be made in writing to ES Print Solutions and any carrier within three day of delivery.

6.3 Notification of non-delivery of the whole order or any separate part of a consignment must be made to ES Print Solutions within 24 hours of the time of delivery by ES Print Solutions to the customer.

6.4 Damage defects or loss to one instalment of an order shall not entitle the customer to refuse or to cancel the remaining instalments of the order.

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7. Proofs and Visuals

Proofs and/or visuals of all work will be submitted for the customer’s approval and ES Print Solutions shall incur no liability for any errors not corrected by the customer in proofs and/or visuals so submitted. Customer’s alterations and additional proofs and/or visuals necessitated thereby shall be charged extra. Conceptual visuals remain the intellectual property of ES Print Solutions.

8. Technical Specifications and Variations in Quantities

8.1 ES Print Solutions will use all reasonable endeavours to ensure compliance with any specification given by the customer but colours; contrasts, colour balances and hues cannot be guaranteed.

8.2 ES Print Solutions will endeavour to deliver the correct quantity of any print run ordered but estimates and quotations are conditional on a margin of five per cent (in colour work ten per cent) being allowed for over’s or shortage which will be charged for or deducted as appropriate.

8.3 Any claims in respect of technical matters must be made to ES Print Solutions within 10 days of delivery.

9. Retention of Title

9.1 All goods and materials supplied to the customer by ES Print Solutions and the copyright therein shall remain the property of ES Print Solutions until such time as they have been paid for in full, all other goods and materials supplied by ES Print Solutions to the customer at any time have been paid for in full and there are no amounts due from the customer to ES Print Solutions on any account or in respect of any matter encumbered.

9.2 Title to and all intellectual property rights in any free of charge material supplied to any customer by ES Print Solutions shall remain with ES Print Solutions unless otherwise agreed in writing.

9.3 ES Print Solutions shall be entitled to enter upon the premises of the customer or any third party where goods or materials remaining the property of ES Print Solutions shall be stored to repossess them at any time pending payment by the customer to ES Print Solutions.

10. Charges

10.1 Where ES Print Solutions provides an estimate or quotation for work the effect is as follows:-

10.1.1 An estimate is ES Print Solutions indication, made in good faith, of the likely charges for carrying out the work concerned based on the information supplied by the customer at the time the estimate is given. An estimate is subject to revision and does not amount to a contractual commitment on the part of ES Print Solutions to carry out the Specified Services for that charge. ES Print Solutions will inform the customer promptly if it becomes apparent that ES Print Solutions charges are likely to exceed any estimate provided.

10.1.2 A quotation is proposed by ES Print Solutions to carry out specific work for a stated charge. If the customer accepts that proposal it then becomes a contractual commitment on the part of ES Print Solutions. If ES Print Solutions carries out work in excess of the Specified Services this will be charged at ES Print Solutions applicable current rates. ES Print Solutions reserves the rights to make additional charges on the same basis for additional work arising from circumstances known to the customer when the quotation was accepted but not disclosed to ES Print Solutions. ES Print Solutions may also pass on to the customer any rise in the costs of production occurring after a quotation has been given.

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10.2 ES Print Solutions must ask the customer, either at the commencement of work on the Specified Services or as it progresses to make a payment to ES Print Solutions on account of ES Print Solutions charges. ES Print Solutions may invoice the customer at periodic intervals, as ES Print Solutions considers appropriate before completion of the Specified Services.

10.3 Unless the customer informs ES Print Solutions to the contrary ES Print Solutions will assume that it has authority to incur usual or necessary expenses and obligations to third parties in the ordinary course of the provision of the Services. ES Print Solutions in any event seek the customer’s express agreement before incurring sums, which are substantial in the context of the Services in question and ES Print Solutions knowledge of the customer’s circumstances. These items will be charged in addition to ES Print Solutions charges.

10.4 Where applicable VAT will be added to all charges at the prevailing rate.

11. Payment

11.1 If ES Print Solutions has agreed to grant the customer credit facilities invoices shall be due and payable within thirty days of the date of invoice.

11.2 If no credit facilities have been agreed invoices shall be due and payable immediately.

11.3 In the case of late payment ES Print Solutions reserves the right to charge interest at a daily rate equivalent to 5% over the base rate of Royal Bank of Scotland plc from time to time in force such interest shall accrue on the balance outstanding at such a rate after as well as before judgement.

12. Set-Off

No claims arising out of or in respect of any agreement between ES Print Solutions and the customer shall excuse payment when due and no right of set-off shall exist in favour of the customer.

13. Instructions

13.1 The customer shall use all reasonable endeavours to ensure that unambiguous instructions are provided to ES Print Solutions and that all such requests for instructions as may be made by ES Print Solutions are dealt with promptly to enable ES Print Solutions to meet any agreed deadlines or timescales.

13.2 Unless ES Print Solutions has agreed instructions to the contrary all standing matter will be effaced or deleted immediately after the Order is executed.

13.3 ES Print Solutions may refuse any instruction to print or publish any matter, which in its opinion is or may be of an illegal or libellous nature.

14. Liability

14.1 Except as is expressly provided in this Agreement ES Print Solutions shall have no liability whatsoever (whether in tort, contract or otherwise) toward the customer except for liability for death or personal injury resulting from negligence.

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14.2 ES Print Solutions shall not be liable to the customer for any defect in workmanship or materials supplied to ES Print Solutions either by the customer or any third party to enable ES Print Solutions to provide any Service or Specified Services or which materials might have been Manufactured or produced either by the customer or any third party in England Scotland or Wales in breach of current Health and Safety or Employment Legislation or Regulation or under equivalent legislation of their country of origin if so manufactured or produced outside England Scotland or Wales.

14.3 ES Print Solutions shall not be liable for the customer’s loss of use, profits, contract, production or revenue or for increased cost of working or business interruption, however caused, arising out or in connection with the provision of the services, irrespective of whether such loss, increase, cost of working or business interruption is caused by the sole or concurrent negligence of ES Print Solutions or the customer, whether or not foreseeable at the date of the contract or by any other act or omission by ES Print Solutions.

14.4 The customer hereby indemnifies ES Print Solutions against all or any liabilities arising from the infringement of copyright, design rights, trade marks or any other intellectual property rights of third parties by any material produced by ES Print Solutions where the content of such material has been provided by the customer or where the customer has not notified ES Print Solutions that it does not approve the content of such material.

15. Force Majeure

15.1 If either party by reason of Force Majeure is rendered unable, wholly or in part to carry out obligations hereunder then upon notice of such Force Majeure to the other, given within 10 days after the party claiming relief becomes aware of the occurrence thereof, the obligations of the parties shall be suspended for the period during which such Force Majeure shall continue provided that the party affected: -

15.1.1 shall use all reasonable endeavours to minimise the effects of any such Force Majeure; and
15.1.2 shall not be released by reason of Force Majeure from any obligation to indemnify or make any payment due hereunder.

16. Variation

ES Print Solutions may vary the terms of this contract from time to time provided that the customer is not prejudiced as a result thereof. ES Print Solutions will provide at least 14 days notice of any variation.

17. Assignment

17.1 The customer shall not assign its rights under any contract with ES Print Solutions without the express permission in writing by ES Print Solutions.

17.2 ES Print Solutions may assign, sub-contract or sub-let any contract with the customer or part thereof at any time.

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18. Copyright and Confidentiality

18.1 Subject to 18.2 below copyright in these terms and conditions and in all documents, designs, text or other materials including electronic produced by or on behalf of ES Print Solutions in connection with this agreement shall remain with ES Print Solutions.

18.2 Subject to the provisions of clause 9 all Intellectual Property Rights in the context of the specified services, which are particular to the customer shall vest in the customer provided always that the customer is not in default in any of its obligations under this Agreement.

18.3 Neither party shall, without the prior written consent of the other, disclose to any third party or otherwise make use of any confidential information, data either electronic or manual which has come into its possession or which may in the course of this Agreement come into its possession relating to the other party, save that the customer consents to ES Print Solutions collecting and processing data relating to the customer.

18.4 The obligations contained in this clause shall continue notwithstanding any termination of this Agreement.

19. Termination

19.1 If the customer being an individual makes any formal or informal arrangement with creditors or becomes bankrupt, or being a company goes into liquidation, administration or administrative receivership or has a winding up petition presented or has a receiver of any of its assets appointed or ceases or threatens to cease carrying on business ES Print Solutions shall be entitled to cancel any outstanding contract or suspend further deliveries without liability to the customer and if goods have been delivered or services rendered and not paid for the full price shall become immediately due.

19.2 Similarly if the customer commits any breach of this Agreement or these terms and conditions this Agreement shall be terminated forthwith save that ES Print Solutions shall be entitled to immediate payment for any outstanding unpaid order.

20. Waiver

No indulgence shown by ES Print Solutions to the customer shall prevent ES Print Solutions subsequently insisting upon its rights and remedies under this Agreement.

21. Notices

Any notice given pursuant to this Agreement shall be in writing and may be served by personal delivery, electronic mail, facsimile transmission, pre-paid recorded delivery or registered post to the addressee at its registered office for the time being and shall be deemed to have been received:-

- a) in the case of personal delivery, facsimile transmission or electronic mail at the time of delivery or sending as appropriate;
- b) in the case of recorded delivery or registered post, 48 hours from the time of posting.

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22. Dispute Resolution

If the customer is dissatisfied with any services or wishes to make a complaint, this should be raised with the Accounts manager concerned in the first instance. If the complaint remains unresolved after the discussion it should be referred to ES Print Solutions Managing Director.

23. General

23.1 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement and supersedes and extinguishes any representations and understandings previously given or made, other than those contained herein, and no variation shall be effected unless contained in a written document which is dated and refers to this Agreement and its date, identifies the clause or clauses which are to be varied and has been signed by a ES Print Solutions Director and countersigned by an authorised representative of the customer.

23.2 Headings in this Agreement are inserted for convenience only and shall not affect the interpretation of any of its provisions.

23.3 This Agreement shall be construed and governed in all respects in accordance with the laws of England and any disputes or differences shall be subject to the exclusive jurisdiction of the English Courts.

23.4 If any provision of these Terms and Conditions is held by the English Courts to be invalid or unenforceable in whole or in part the validity of the remaining conditions shall not be affected.

23.5 Pursuant to Section 1(2) a of the Contracts (Right of Third Parties) Act 1999 none of these terms and conditions may be enforced by a Third Party.

24. Intellectual Property

The names, images and logos identifying ES Print Solutions Ltd and supplied by ES Print Solutions, or third parties and their products and services are subject to copyright, design rights and trade marks of ES Print Solutions Ltd, and their third parties. Nothing contained in these terms shall be construed as conferring by implication, estoppels’ or otherwise any licence or right to use any trademark, patent, design right or copyright of ES Print Solutions Ltd, or any other third party.

25. General

If there is any conflict between these terms and specific terms appearing elsewhere in ES Print Solutions general terms and conditions, then the latter shall prevail. If any of these terms are determined to be illegal, invalid or otherwise unenforceable by reason of the laws of any state or country in which these terms are intended to be effective, then to the extent and within the jurisdiction in which that term is illegal, invalid or unenforceable, it shall be severed and deleted from these terms and the remaining terms shall survive, remain in full force and effect and continue to be binding and enforceable. These terms shall be governed by and interpreted in accordance with the laws of England and Wales and Scotland, European Law, and the laws and governance and statutes of the United States, Australia, South Africa and China (China limited by domain and province).