

Standard Terms And Conditions For The Sale Of Goods - Keyphoto Limited – 2011

1 Interpretation

1.1 In these Conditions:

"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller

"Goods" means the goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions

"Seller" means Keyphoto Limited

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

"Contract" means the contract for the purchase and sale of the Goods

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2 Basis Of The Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of and other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer

2.2 No variation to these Conditions shall be made binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not confirmed

2.5 Any typographical, clerical, or other error or omission in any sales literature, quotation, Online price list, printed price list, acceptance offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller

3 Orders And Specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms

3.3 The quantity, quality, and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller)

3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or which are due to the manufacturers' policies on availability, specification and conditions of supply or which do not materially affect their quality of performance

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller and as a result of cancellation

4 The Price Of The Goods

4.1 The price of the Goods shall be the Seller's quoted price, or where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 10 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer. The Seller reserves the right to alter the price where a quotation is for a list of items and the subsequent Buyer's order is for only part of the quotation.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without any limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials, other costs of manufacture or manufacturers' policies on pricing), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instruction

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex warehouse basis. Where the Seller agrees to deliver the Goods, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay the Seller

4.5 The Seller may charge a transport and administrative fee for regular orders under the value of £100.

4.6 A re-stocking fee of 25% may be charged for items returned at the buyer's request, or where such a fee is charged to the seller, by the original supplier.

5 Terms Of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods

5.2 The Buyer shall pay the price of the goods as specified in the Contract and if not specified, within 7 days of the date of the Seller's invoice. The Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3% per cent per annum above HSBC Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

6 Delivery

6.1 Delivery of the Goods shall be made as specified in the Contract

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer

6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 20% per cent more or 20% per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated

6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and

	selling expenses) account to the Buyer for the excess over the price paid in the Contract		manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller		becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or the Buyer ceases, or threatens to cease, to carry on business or after the seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary
7	Risk And Property				
7.1	Risk of damage or loss of the Goods shall pass to the Buyer:	8.3	Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Acts 1977), all warranties, conditions or other terms are excluded to the fullest extent permitted by law		
7.1.1	in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or				
7.1.2	in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods	8.4	Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions		
7.2	Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for the price of the Goods for which payment is then due	8.5	Any claim by the buyer which is based on any defect in the quality of conditions of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall be have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract	10	General
7.3	Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary use of its business			10.1	The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other associated company provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller
7.4	Until such time as the property of the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of Buyer or any third party where the Goods are stored and repossess the Goods	8.6	Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods of their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part on question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer	10.2	Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice may be served in person, by first class recorded delivery or facsimile message and will be deemed served upon delivery in person. On the next working day where delivered by post and at the time of proven error free transmission where delivered by facsimile message
7.5	The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable	8.7	Except in respect of death of personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions	10.3	No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision
8	Warranties And Liability			10.4	If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Condition and the remainder of the provisions in question shall not be affected
8.1	Subject to the Conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of their initial use or 3 months from delivery, whichever is the first to expire			10.5	Any dispute arising under or in connection with these Conditions or the sale of the goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society
8.2	The above warranty is given by the Seller subject to the following conditions:				The contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.
8.2.1	the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;		The Seller shall not be liable to the Buyer of be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control		
8.2.2	the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval;		Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party)		
8.2.3	the Seller shall be under no liability for the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;	9	Insolvency Of Buyer		
8.2.4	the above warranty does not extend to parts, materials or equipment not	9.1	If the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company)		