

ERS OFFICE SUPPLIES LIMITED

TERMS AND CONDITIONS OF BUSINESS

1. **Definitions**

In these Conditions where the context admits: "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for ordinary banking business in London. "**Buyer**" means the person or persons who buys/rents or agrees to buy/rent the Goods from the Seller for purposes which are within his trade, business or profession. "**Conditions**" means the terms and conditions set out in this document and any special terms and conditions agreed in writing by the Seller. "**Goods**" means Photocopiers, Printers, Franking Machines, Postal Scales, Letter Openers, Paper Folders and all such other equipment supplied by the Seller to the Buyer subject to these Conditions. "**Machine**" means the Seller's machine used by the Buyer. "**Price**" means (i) the price for the Goods, (ii) Monthly Copy Cost Charge for the Maintenance Contract and (iii) any other payment that the Buyer may be required to make. Each such amount being as set out in the Seller's literature brochures then effective or in the order form, exclusive of VAT which shall be at the rate ruling at the date of the Seller's invoice. "**In Writing**" means Letter, Facsimile transmission or e-mail. "**Seller**" means ERS Office Supplies Limited, a company registered in England and Wales under number 0669197 and whose registered office is 7 Grafton Lane, Bidford on Avon, Alcester, Warwickshire B50 4DX
2. **Application of Conditions and Formation of contract**
- 2.1 Quotations and tenders may be issued by the Seller at its own discretion and orders for the sale of Goods and provision of the Maintenance Contract are accepted by the Seller only upon and subject to these Conditions.
- 2.2 These Conditions shall apply to all contracts for the sale or rental of Goods and provision of the Maintenance Contract by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order or similar document, save that the terms and conditions and other matters appearing on the face of the Seller's quotation and acceptance of order shall, wherever the same are incompatible with these Conditions, to that extent and no further, overrule the latter.
- 2.3 All orders for Goods and any services provided as part of the Maintenance Contract shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Conditions.
- 2.4 All orders placed by the Buyer (whether or not based on a previous quotation or tender) are subject to acceptance by the Seller. No binding contract shall be created by the acceptance on the part of the Buyer of a quotation or tender issued by the Seller or by the Buyer of an order with the Seller until, (a) written notice of the acceptance of the order has been given by the Seller; or (b) (if earlier) the Goods are despatched or any services are provided as part of the Maintenance Contract to the Buyer.
- 2.5 The Seller reserves the right to refuse to accept any order on any grounds whatsoever, including without limitation refusing to accept orders and/or withholding deliveries where any or all of the Buyer's accounts with the Seller are overdue for payment.
- 2.6 Our Terms and Conditions may change from time to time, the most up-to-date and current edition are available on our website - www.ersoffice.co.uk - You are deemed to have received these three days after posting to the said website. The latest edition always takes precedence over those in force at time of signature of agreement.
3. **Prices and Payment**
- 3.1 Unless otherwise agreed in writing, the Price and VAT shall be paid, without set-off or counterclaim, no later than 14 days from the date of the invoice (in advance for purchases made from the Seller's web site), time being of the essence. If for any reason the Buyer is unable or unwilling to take delivery when the Goods are ready for despatch then payment must not be withheld or deferred.
- 3.2 In respect of the Maintenance Contract Charges:
 - a) The Maintenance Contract Charges payable within 14 days of issue of invoice unless otherwise provided in these Conditions, the order form for the Maintenance Contract or other written agreement that may be entered into between the Seller and the Buyer; and
 - b) The Maintenance Contract Charge is reviewed annually by the Seller and the change (if any) shall be notified to the Buyer in writing thirty (30) days prior to the anniversary of entering into this contract.
- 3.3 The Buyer may not withhold payment of any invoice or other amount due to Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have or for any reason whatsoever.
- 3.4 The Buyer shall pay to the Seller the sum due to the Seller from time to time in force and shall accrue at such a rate after as well as before any judgment. The Buyer shall reimburse the Seller for all costs and expenses (including legal costs on an indemnity basis) incurred in the collection of any of the due payments.
- 3.5 If (i) the Buyer fails to make payment for the Goods in accordance with these Conditions or commits any other breach of these Conditions; (ii) any distress or execution shall be levied upon any of the Buyer's Goods; (iii) the Buyer offers to make any arrangement with its creditors; (iv) the Buyer commits an act of bankruptcy; or any petition in bankruptcy is presented against the Buyer; (v) the Buyer is unable to pay its debts as they fall due; (vi) being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented; (vii) a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets; (viii) the Buyer shall suffer any analogous proceedings under foreign law; or (ix) within the opinion of the Seller the credit-worthiness of the Buyer has deteriorated prior to delivery, then all sums outstanding in respect of Goods and The Maintenance Contract shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have: (a) suspend all future deliveries of the Goods; (b) suspend or refuse to pay its debts as they fall due; (c) exercise any of its rights pursuant to Condition 7 below; (d) subject to the landlord's rights, enter without prior notice any premises where Goods owned by it may be and to repossess and dispose of any Goods owned by it so as to discharge any sums owed to it by the Buyer under this or any other contract; (e) require the Buyer not to re-sell or part with possession of any Goods supplied by the Seller until the Buyer has paid in full all sums owed by it to the Seller for any reason whatsoever; and (f) withhold delivery of any undelivered Goods and stop any Goods in transit.
- 3.6 Unless the Seller expressly agrees otherwise, any contract between it and the Buyer for the supply of Goods and provision of The Maintenance Contract shall remain in existence notwithstanding any exercise by the Seller of its rights under this Condition 3 and/or Condition 7 below.
4. **Cancellation**

Under the terms of these Conditions, no order of the Goods can be cancelled by the Buyer once it has been accepted by the Seller.
5. **Delivery**
- 5.1 Delivery of the Goods shall be made to the Buyer's address within the UK or such other address within the UK as the Buyer shall notify to the Seller in writing and the Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Buyer does not take delivery of the Goods it shall meet all the Seller's expenses incurred as a result of the Seller's inability to effect delivery including any cost of redelivery or storage.
- 5.2 Any times and dates quoted for completion or delivery of the Goods are estimates only and time for delivery shall not be of the essence. The Seller reserves the right to deliver Goods in instalments and to deliver a separate invoice in respect of each instalment. Where Goods are delivered in instalments, the contract shall be severable and each instalment shall be deemed to constitute a separate contract. No default by the Seller in respect of one or more instalments shall entitle the Buyer to treat the contract as repudiated or discharged.
- 5.3 Insofar as is permitted by law, the Seller shall not be liable in any way for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.4 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 6 months of the date that the Seller notified the Buyer of its acceptance of the order.
6. **Force Majeure**
- 6.1 If the delivery of Goods or provision of any services as part of the Maintenance Contract by the Seller or the acceptance of Goods or any services which form part of the Maintenance Contract by the Buyer is delayed or prevented because their manufacture or their delivery or provision to the Buyer has been or is being prevented by any cause whatsoever outside the control of the Seller, such delivery shall be suspended. In such circumstances, the Seller shall give written notice to the Buyer and shall be entitled to cancel or suspend deliveries or provisions without prejudice to its rights to payment for any Goods already delivered or any services provided as part of the Maintenance Contract. In any event the Seller shall not be liable in any way for loss or damage arising directly or indirectly through or as a consequence of such events or happenings.
- 6.2 Deliveries shall resume as soon as the circumstances set out in Condition 6.1 above which are causing the delay cease, and the period during which the deliveries or provisions are to be made will be extended accordingly.
- 6.3 The Seller shall not be deemed to be in breach of these Conditions and shall not be otherwise liable towards the Buyer, by reason of any delay in the performance of its obligations where such delay in performance is due to any of the events set out in Condition 6.1 above of which it has notified the Buyer.
7. **Title and Risk**
- 7.1 Risk and liability in respect of the Goods shall pass to the Buyer on delivery but title in the Goods shall not pass from the Seller until: (a) the Buyer has paid the Seller unconditionally and in full all monies due under this contract; and (b) no other sums are then outstanding from the Buyer to the Seller on any account whatsoever whether or not such sums have become due for payment. If the contract is for rental of the Goods then title does not pass at any time.
- 7.2 Until title in the Goods passes to the Buyer in accordance with Condition 7.1 above, the Buyer shall hold the Goods on a fiduciary basis as Bailee for the Seller and shall not permit any charge or lien whatsoever to be created over any property of the Seller. The Buyer shall store the Goods separately from all other Goods in its possession and marked in such a way that they are clearly identifiable as the Seller's property. The Buyer shall insure and keep insured the Goods to their full value against "all risks" until the date that property in the Goods passes from the Seller and shall upon reasonable notice furnish the Seller with satisfactory evidence that adequate policies of insurance are being maintained and that the premiums are paid up to date.
- 7.3 In relation to any resale, the Buyer does not sell as the Seller's agent and the Seller accepts no liability in this respect.
8. **Specification**
- 8.1 The Goods supplied by the Seller shall be in accordance with those specifications or descriptions expressly listed or set out in the Seller's acceptance of order.
9. **Acceptance of the Goods**
- 9.1 The Buyer shall be deemed to have accepted the Goods 2 days after delivery to the Buyer's address stipulated under Condition 5.1 above.
- 9.2 After acceptance the Buyer shall not be entitled to reject any Goods which are not in accordance with Condition 8 above.
- 9.3 If the Buyer rejects any of the Goods which are not in accordance with Condition 8 above, the Buyer shall give notice of rejection to the Seller and at Buyer's cost and risk return such Goods to the Seller.
- 9.4 No Goods delivered to the Buyer which are in accordance with Condition 8 above will be accepted for return without the prior written approval of the Seller.
- 9.5 If the Seller agrees to accept any such Goods for return the Buyer shall be liable to pay a handling charge of 20% of the invoice Price. Such Goods must be returned by the Buyer carriage paid to the Seller in their original packaging and at the Buyer's risk.
- 9.6 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have. If the Buyer does not reclaim or recover such Goods within 30 days the Seller may appropriate the Goods for resale.
10. **Warranty**
- 10.1 Subject to Condition 11 below, the Seller warrants that the Goods (excluding consumables) will be free from defects in material and workmanship for a period of 12 months, in the case of NEW equipment and 3 months in the case of REFURBISHED equipment, from the date of delivery and the Seller will, at its own discretion, refund the Price, or repair or replace free of charge any such Goods which its examination confirms are defective provided that: (a) the Buyer makes a full inspection of the Goods immediately upon delivery; (b) the Buyer notifies the Seller forthwith of any defects which it discovers; (c) the Buyer has used the Goods in accordance with any instructions or recommendations of the Seller; (d) the Goods have not been adjusted, altered, adapted, or repaired by any person other than the Seller (e) the Goods are made available by the Buyer to the Seller for inspection by the Seller by returning the Goods to the Seller at the Buyer's own cost and risk.
- 10.2 In no circumstances shall the Seller's liability to the Buyer for any breach of warranty exceed the price paid for the Goods with respect to which the claim is made.
- 10.3 Subject to Condition 11 below, the Seller's aggregate liability for all claims made in respect of the Goods and the Maintenance Contract shall not exceed £1 million in aggregate.
- 10.4 The Seller's liability under these Conditions shall be to the exclusion of all other liability to the Buyer whether contractual, tortious or otherwise for defects in the Goods or for any loss or damage to or caused by the Goods, and (subject to Condition 11 below) all other conditions, warranties, stipulations or other statements whatsoever concerning the Goods, whether expressed or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) the Seller grants no warranties regarding the fitness for purpose, performance, use, nature or satisfactory quality of the Goods, whether expressed or implied, by statute, at common law or otherwise howsoever except to the extent expressly provided in Conditions 8 and 10.1.
- 10.5 Subject to Condition 11 below, the warranty set out in this Condition 10 shall not apply if the Buyer breaches any of its obligations under Condition 19 below.
11. **Limitation**
- 11.1 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including but not limited to loss of profit) suffered by the Buyer arising out of a breach by the Seller of these Conditions.
- 11.2 Nothing contained in these Conditions shall take effect or be construed so as to limit the Seller's liability under Part 1 of the Consumer Protection Act 1987, or Section 12 of the Sale of Goods Act 1979, or its liability for death or personal injury resulting from the Seller's negligence as defined in Section 1(1) of the Unfair Contract Terms Act 1977 or its liability in respect of fraudulent misrepresentation. Where the Buyer is a person "dealing as consumer" as defined in Section 12 of the Unfair Contract Terms Act 1977, nothing contained in these Conditions shall affect the rights of the Buyer under Section 13, 14 or 15 of the Sale of Goods Act 1979 or shall take effect or be construed so as to limit the Seller's liability under those sections.
12. **Entire Agreement**
- 12.1 The terms contained in these Conditions, together with any Seller's quotation and acceptance of order referred to herein, constitute the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
13. **Variation**
- 13.1 These Conditions cannot be varied unless expressly agreed in writing with the Seller and signed by an authorised representative of the Seller.
14. **Partial Invalidity**
- 14.1 The illegality or unenforceability of any provision of these Conditions shall not affect the legality or enforceability of the remaining provisions.
15. **Transfer or Reassignment**
- 15.1 The Buyer shall not attempt to assign the benefit of this contract without the prior written consent of the Seller.
- 15.2 No person who is not a party to this contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.
16. **Sub-contract**
- 16.1 The Seller reserves the right to subcontract in whole or in part of any services provided by it under this contract.
17. **Rights Cumulative**
- 17.1 a) The rights, powers, privileges and remedies provided in this contract are cumulative and are not exclusive of or in substitution with the remedies contemplated by them shall, except where otherwise specifically provided, be in writing in the English language and shall be addressed to the Seller's address set out in Condition 1 above respectively.
- 17.2 b) No failure to exercise nor any delay in exercising by any party to this contract of any right, power, privilege or remedy under this contract shall impair or operate as a waiver thereof in whole or in part.
- 17.3 c) No single or partial exercise of any right, power, privilege or remedy under this contract shall prevent any further or other exercise thereof or the exercise of any other right, power, privilege or remedy.
18. **Notice**
- 18.1 Any notice (which term shall in this clause include any other communication) required to be given under these Conditions or in connection with the contract contemplated by them shall, except where otherwise specifically provided, be in writing in the English language and shall be addressed to the Seller's address set out in Condition 1 above respectively.
19. **Buyer's Obligation**
- 19.1 The Buyer shall: (a) maintain a suitable environment and electrical power supply for the Goods in accordance with any advice given by the representative of the Seller; (b) only allow the Goods to be operated under the supervision of trained and competent persons and shall keep the external surfaces of the Goods clean; (c) not make any alteration or modification to the Goods unless otherwise specified in the operating guide or allow persons other than the Maintenance Contract service provider described in Condition 1 above to carry out any repairs to the Goods; (d) take sole responsibility for the Goods and the Goods incurred by any third party; and (e) submit machine counts monthly, or at any other time, as requested by the Maintenance Contract service provider without let or hindrance. Submissions to be by Facsimile, Telephone or Email.
- 19.2 For the avoidance of doubt, the Buyer shall take sole responsibility for installing the Goods that are stated to be "self-install".
20. **The Maintenance Contract**
- 20.1 The Seller provides, subject to compliance by the Buyer with all of its obligations set out in this Condition 20 and Conditions 3.1, 19.1e and 3.2, the services whereby the Seller:
 - a) gives access to telephone/engineer assistance where required
 - b) ensures a sufficient stand-by supply of consumables at the Buyer's premises
- 20.2 The Buyer shall:
 - a) make payment, by cheque (made payable to the Seller), credit card or bank transfer, of the Maintenance Contract Charge in accordance with Conditions 3 and 5.1
 - b) Submit via the agreed method, a monthly note of the copy counts which shall specify the amount of copies/prints made during the preceding month. Counts may not be withheld for any reason whatsoever.
 - c) Pay to the Seller any other charges that may apply, if indicated in the order form as payable.
 - d) Shall give to the Seller seven (7) Business Days' prior notice in the event that the Buyer requires an unusually high volume of printing/copying by using the Machine;
 - e) Inform the Seller immediately if the Buyer moves address or ceases to use Goods; and
 - f) Have a fully paid Maintenance Contract for the Machine with a Maintenance Contract service provider approved either by Royal Mail, Equipment manufacturer, Leasing company or the Seller
- 20.3 The term for the provision of the Maintenance Contract under this Condition 20 shall be one (1) year (the "Initial Period") from the date of the order form and this Condition 20 shall automatically continue after the Initial Period for a further year unless either party gives not less than three (3) months' notice expiring at the end of the Initial Period that it does not wish it to continue. Thereafter, unless terminated at the end of the Initial Term, it shall automatically continue for consecutive periods of one year unless notice is given by either party to the other at least thirty (30) days before the commencement of a forthcoming year that it wishes this Condition 20 to terminate. In the case of Rental Equipment the Maintenance Contract is to run concurrently with the rental period.
- 20.4 The Seller shall be entitled to terminate this Condition 20:
 - a) Upon occurrence of any event set out in Condition 3.5;
 - b) If the Buyer fails to pay the Price that is due under these Conditions; or
 - c) If the Buyer breaches any term of these Conditions.
21. **Dies**
- 21.1 When postal franking machines are sold under these Conditions, the Seller shall retain ownership of the Crown Die image and of any other intellectual property rights relating to it.
22. **Liability after Termination**
- 22.1 On termination, the Seller reserves the right to collect any outstanding amount that may remain at that time.
23. **General Clauses**
- 23.1 i) In case payments are late for more than one payment obligation, all claims against the purchaser shall fall due immediately.
- 23.2 ii) Purchase terms of our customers apply only to the extent that they do not contradict our terms of payment and delivery.
- 23.3 iii) We are entitled to assign the claims arising from our business relationship.
24. **Governing Law**
- 24.1 These Conditions and any non-contractual obligations arising from or connected with it shall be governed by English law and these Conditions shall be construed in accordance with English law. The parties agree to submit to the exclusive jurisdiction of the English courts.