

AMBERLEY ADHESIVE LABELS LTD. - TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

“Amberley” Amberley Adhesive Labels Limited (company number 4404780)

“Conditions” means the standard terms and conditions of supply set out in this document together with (unless the context otherwise requires) any special terms and conditions agreed in writing between Amberley and the Customer

“Contract” the contract between Amberley and the Customer for the supply of Goods and/or Services

“Customer” the individual, firm, company or other party whose order for supply of Goods and/or Services is accepted by Amberley

“Goods” the goods, articles and materials which are to be supplied by Amberley pursuant to the Contract

“Price” the price for the Goods/and or the Services

“Services” shall include any printing or other services to be provided by Amberley pursuant to the Contract whether in relation to the supply of the Goods or otherwise

2. FORMATION OF CONTRACT

2.1 Any quotation or estimate given by Amberley is an invitation to the Customer to make an offer only and no order of the

Customer placed with Amberley in pursuance of a quotation or estimate or otherwise shall be binding on Amberley unless and until it is accepted by Amberley

2.2 Any Contract shall incorporate and be subject to these Conditions and receipt of the Goods by the Customer shall be deemed to be conclusive proof that the Customer has accepted these Conditions in the absence of any express or other implied acceptance of these Conditions by the Customer

2.3 All other terms and conditions (except those implied in favour of a seller which are not inconsistent with these

Conditions) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or any other document delivered or sent by the Customer to Amberley are expressly excluded

2.4 Any reference in the Contract to the Customer’s order, specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect

3. ORDERS AND SPECIFICATION

3.1. The Customer shall be responsible to Amberley for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving Amberley

any necessary information relating to the Goods and/or the Services within a sufficient time to enable Amberley to perform the Contract in accordance with its terms

3.2. The quantity and description of and any specification for the Goods shall be those set out, or referred to, in Amberley's confirmation of order

3.3. No order which has been accepted by Amberley may be cancelled by the Customer except with the agreement in writing of Amberley and on terms that the Customer shall indemnify Amberley 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 Amberley as a result of cancellation

3.4. If any claim is made or action brought by a third party against Amberley concerning Goods made or adapted specifically to the Customer's designs and specifications (and whether settled, litigated, discontinued or otherwise dealt with by Amberley howsoever) and Amberley thereby incurs any cost, loss, liability or penalty of any kind the Customer shall (save to the extent that such cost, loss, liability or penalty arises as a direct result of the negligence of Amberley, its employees or agents) pay to Amberley on a full indemnity basis the full amount of such cost, loss, liability, expense or penalty without enquiry, deduction, withholding, set-off, counterclaim or cross demand

3.5. The cost of any variation or modification in the design, specification, materials or drawings of the Goods or any development thereof which are required to ensure conformity with any applicable legal or safety requirements, or which are requested by the Customer after the date of the Company's acceptance of order, shall, if such variations or modifications are accepted by Amberley, be borne by the Customer and Amberley shall not be liable for any delay in supplying the Goods and/or the Services caused by such variations or modifications

4. CUSTOMER'S MATERIALS, SAMPLES AND PROOFS

4.1. Quantities of materials supplied by the Customer shall be adequate to cover normal spoilage. Amberley may reject any materials supplied or specified by the Customer in connection with the Contract but acceptance thereof shall not constitute a warranty that they are suitable. Additional costs incurred by Amberley if such materials are judged to be unsuitable will be charged to the Customer

4.2. Amberley shall not be responsible for any loss, damage, cost or expense arising from use by it of any materials supplied or specified by the Customer or from any mistake, defect or inaccuracy in any photographs, artwork, plates, paper, tapes, films or other materials supplied by the Customer. Any loss, damage, cost or expense arising therefrom or from Amberley's reproduction of such mistakes, defects or inaccuracies shall be for the sole account of the Customer who shall indemnify Amberley accordingly

4.3. Without prejudice to the other provisions of this Condition 4, in no circumstances shall Amberley's liability for tapes, films, artwork, plates, paper and other materials provided to Amberley by, or otherwise held by Amberley on behalf of, the Customer exceed the basic raw material cost of the media and not any production, artistic, aesthetic or rarity cost or value in the material. Any materials of the Customer held by Amberley may be dealt with by Amberley in the manner and circumstances provided for under Condition 15.6

4.4. Amberley may submit proofs for the Customer's approval and shall not be liable for any error in the proofs not corrected by the Customer. Incorporation of the Customer's corrections (including alterations in style, composition and layout) and the cost of additional proofs in relation thereto

shall be subject to an extra charge at Amberley's then current rate

4.5. Every effort will be made to see that the Goods and/or Services comply substantially with any samples previously supplied by Amberley but Amberley shall not be liable if they do not so comply save in circumstances where there is a material non-compliance (but subject always to Condition 13)

4.6. When the style, layout or type is left to Amberley's judgement, changes therefrom required by the Customer shall be subject to an extra charge at Amberley's then current rate

4.7. A charge may be made by Amberley to cover any additional work required where copy supplied is not clear and legible

5. LICENCES AND COPYRIGHT CLEARANCES

5.1. The Customer shall obtain in writing in good time and hereby warrants that it has so obtained any and all necessary licences, permits, consents or approvals for the import/export, copying, use, production, reproduction, distribution or sale of the Goods or the provision of the Services (including without limitation all necessary copyright, design right, registered design, trade mark, patents and other applicable intellectual property right consents, clearances, licences or approvals and any necessary waivers of moral rights) and will indemnify Amberley and keep it fully and effectively indemnified on demand against any cost, claim, liability or expense Amberley incurs as a result of any failure or delay so to do

5.2. Whether before or after the commencement of the Contract Amberley may refuse to produce any Goods or provide any Services which it considers may be illegal or might infringe any third party's rights or create any criminal or civil liability or otherwise bring Amberley into disrepute in the minds of right thinking people

6. PRICE

6.1. The Price shall be Amberley's quoted price

6.2. All prices quoted in writing are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by Amberley without giving notice to the Customer. Oral quotations made by Amberley are valid only to the end of the business day upon which they are given

6.3. Amberley reserves the right after consultation with the Customer to adjust the Price to reflect any increase in the cost to Amberley which is due to any factor beyond the control of Amberley (such as, without limitation, any foreign exchange fluctuation, currency regulations, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Amberley adequate information or instructions

6.4. All Prices are ex works and, unless otherwise agreed, exclude Amberley's charges for transport and insurance. The

Price does not include the cost of cases or other packing materials which shall remain the property of Amberley and will be returnable at the Customer's expense at the request of Amberley. Any such cases or packing materials not returned by the Customer within 30 days of such request shall be paid for by the Customer at their then value

6.5. The Price and any additional charges payable under this Contract are exclusive of Value Added Tax which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law

7. PAYMENT

7.1. Unless otherwise agreed in writing between the Customer and Amberley, payment shall be made in sterling in cleared funds within 30 days from the end of the month in which Amberley's invoice is submitted and without any withholding, deduction, set-off, counterclaim or cross demand

7.2. Where Goods and/or Services are delivered or performed by instalments the Customer shall be obliged to pay for each instalment upon the terms set out in Condition 7.1

7.3. Time for payment shall be of the essence of the Contract. If any sum payable under the Contract is not paid within 7 days after the date due then, without prejudice to Amberley's other rights and remedies, Amberley reserves the right to:-

(a) in addition to and without prejudice to any other rights it may have, to bring against the Customer an action for the Price or part thereof whether or not the property in the Goods has passed;

(b) Cancel the contract or suspend any further deliveries to the Customer;

(c) Appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods or services supplied under any other contract between the Customer and Amberley) as Amberley may think fit (notwithstanding any purported appropriation by the Customer); and

(d) Charge interest on such sum, on a day to day basis, as well after as before any judgement, from the date or last date for payment thereof to the date of actual payment (both days inclusive) at the rate of 5% above the base rate of Lloyds Bank plc from time to time in force. Such interest shall be paid on demand.

8. DELIVERY AND PERFORMANCE

8.1. The Goods will be delivered to the Customer when Amberley makes them available to the Customer or its agent or any carrier (who shall be the Customer's agent whoever pays its charges) at Amberley's premises or at such other delivery point agreed by Amberley

8.2. Amberley may, at its discretion, deliver the Goods and/ or perform the Services by instalments in any sequence. Where the Goods are delivered or the Services performed by instalments, each instalment shall be deemed to be the subject of a separate contract to which these Conditions shall apply (mutatis mutandis) and save as provided in Condition

14.1 No default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any other instalments

8.3. Unless otherwise agreed, Amberley reserves the right to deliver to the Customer up to 10% more or 5% less than the number of Goods ordered without any adjustment in the Price, and the quantity so delivered shall be deemed to be the quantity ordered.

8.4. Any dates quoted by Amberley for the delivery of the Goods or performance of the Services are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of Amberley no regard has been paid to any quoted delivery dates.

8.5. If Amberley is prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control including (but without limiting the generality of the foregoing) strikes, lock-outs or other industrial action, inability to obtain materials or labour, the effects of “the millennium bug”, power or machinery breakdown or failure, fire, flood, civil commotion or any cause of whatever kind and whenever occurring further performance of the Contract shall be suspended for so long as Amberley is so prevented or hindered provided that if the performance of the Contract is suspended for more than 3 consecutive calendar months the Customer shall be entitled by notice in writing to Amberley forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate for all Goods and Services supplied and materials used by Amberley to the actual date of such termination

8.6. Where Goods are to be supplied or delivered by Amberley in accordance with periodic delivery schedules the Customer shall not be entitled to cancel or vary any such delivery schedule which is expressed by the Customer to be a firm requirement without the prior written consent of Amberley and Amberley shall be entitled to reimbursement of any additional costs and expenses incurred or suffered as a result of such cancellation or variation

8.7. When expedited delivery or completion is agreed to by Amberley outside the terms of the Contract, and necessitates overtime or other additional costs, the Customer shall reimburse Amberley for the amount of such overtime payment or other costs

8.8. If performance of the Contract is suspended at the request of or delayed through default of the Customer including (without prejudice to the generality of the foregoing) lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the Goods or Services for a period of 10 days Amberley shall be entitled to payment at the Contract rate for Services already performed, Goods supplied or ordered and any other additional costs thereby incurred including storage, insurance and interest provided that if the Customer fails to collect or accept delivery of the Goods or any part thereof within 28 days of written notification from Amberley that the Goods are ready for collection or delivery Amberley shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell or at its option destroy the Goods and to apply the proceeds of sale thereof if sold and the scrap value if destroyed towards payment of all sums due to Amberley under the Contract

8.9. Amberley shall be entitled without the prior approval of the Customer to assign, sub-contract or sub-let the Contract or any part thereof but the Customer shall not be so entitled without the prior approval of Amberley

9. TITLE AND RISK

9.1. Risk of damage to or loss of the Goods shall pass to the Customer at the earlier of either the time when Amberley notifies the Customer that the Goods are available for collection or upon Amberley first tendering delivery of them to the Customer (whether or not delivery is actually taken)

9.2. All other material, including but not limited to items referred to in Condition 4, in the possession of Amberley or otherwise shall be held, worked on and carried at the Customer’s risk in every respect and the Customer is advised to retain duplicates or copies of any master artwork, plates, paper, films, tapes and other materials provided to Amberley

9.3. Unless and until all monies owed by the Customer to Amberley (at the time payment for the particular contract falls due, and whether under that or another contract) have been received in full in cash or cleared funds then:

(a) property in any Goods shall remain with Amberley and the Customer shall hold the Goods as Amberley's fiduciary agent and bailee and shall keep the Goods separate from those belonging to the Customer and third parties and properly stored, protected and insured and identified as Amberley's property;

(b) the Customer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to Amberley for the proceeds of sale or otherwise of the Goods, including the insurance proceeds and keep all such proceeds of sale in a separate bank account clearly denoted as an account containing monies deposited for Amberley's benefit by the Customer acting in a fiduciary capacity. The Customer also undertakes at Amberley's request to assign to Amberley all rights and claims in respect of the Goods until payment has been made to Amberley in full;

(c) Amberley may (without prejudice to its other rights) require the Customer or other party holding the Goods to return them to it, enter upon the Customer's or such party's premises to recover them and/or resell the Goods, and its representatives shall not be liable for any reasonable disturbance or damage caused in the reasonable exercise of such rights; and

(d) Amberley shall have a lien over any of the Customer's assets in its possession or control

10. ISDN TRANSMISSIONS

10.1. Where Goods are delivered to the Customer by means of ISDN transmission:

(a) Amberley shall give the Customer reasonable notice of any intended ISDN transmission;

(b) the Customer undertakes to ensure that its ISDN receiver is year 2000 compliant (in accordance with BSI DISC PD2000-1), is compatible with that of Amberley, is not part of a network and is capable of receiving transmissions at the times notified to it by Amberley;

(c) Amberley shall not be liable for late or non-delivery which is a result of the Customer's failure to comply with Condition

10.1 (b) or of failure of the ISDN connection outside the control of either party;

(d) delivery shall be deemed to have taken place when Goods are transmitted from Amberley to the Customer by ISDN, transmission being deemed to be effected when the Customer's ISDN connection number has been dialled by Amberley, subject to Condition 10.1 (a); and

(e) The Customer shall notify Amberley immediately that any ISDN transmission has not been successful in any way and Amberley reserves the right to then deliver by any other means in accordance with the Contract

11. INTELLECTUAL PROPERTY RIGHTS

11.1. Amberley retains ownership of all inventions, designs, copyrights and processes relevant to the Goods and/or

Services, and not provided by the Customer or a third party. Copyright exists in all documents, designs, programs, or other material issued by or on behalf of Amberley which the Customer shall

keep confidential and not disclose or use (other than for the particular purpose for which it was disclosed) for his or another's benefit without Amberley's prior written consent

11.2. All film negatives and positives, plates, sketches, samples and original designs of any kind, moulds, tapes, cutters, designs and other materials created or acquired for the performance of the Contract shall, unless otherwise agreed, remain the exclusive property of Amberley. Amberley shall not be obliged to preserve any of the same unless expressly agreed in writing by Amberley whereupon the cost of storage of the same shall be subject to an extra charge

12. ACCEPTANCE OF GOODS

12.1. Any claim by the Customer which is based on any defect in the quality or condition of any Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to Amberley within 10 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. Save in the circumstances referred to in Condition 13.3, Goods accepted by the Customer cannot subsequently be returned and any claim which the Customer might otherwise have shall be deemed to have been waived, and the Customer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract

12.2. The Customer will indemnify Amberley against any loss which it suffers because any notification pursuant to sub-clause 12.1 is received too late to enable it to claim against carriers or insurers in respect of any damage or loss in transit

13. LIABILITY

13.1. The Customer hereby warrants to Amberley that it has not been induced to enter into the Contract by any prior representations whether oral or in writing except as specifically contained in the Contract and the Customer hereby waives any claim for breach of any such representations which are not so specifically mentioned

13.2. Any advice or recommendation given by Amberley or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Amberley is followed or acted upon entirely at the Customer's own risk, and accordingly Amberley shall not be liable for any such advice or recommendation which is not so confirmed. Amberley shall not be liable for any defect in the Goods which is caused by the use of the Goods in conjunction with the Customer's or a third party's products unless Amberley has agreed at the time an order is placed to be so liable and has been given a reasonable opportunity by the Customer to test the compatibility of the Goods with such products

13.3. If Amberley fails to provide the Goods and/or Services in compliance with the Contract or they are proven defective by reason of Amberley's default, Amberley's liability shall be limited to their repair or replacement or if this is not possible to refunding the Price paid in respect of the faulty Goods and/or Services

13.4. Without prejudice to Condition 13.3, Amberley shall not be liable for any lost or anticipated profits or savings or any special incidental or consequential losses or damages. Except in respect of injury to or death of any person (for which no limit applies) the liability of Amberley under these Conditions in respect of each event or series of connected events shall not exceed the total Price for the Goods and/or the Services

13.5. Subject to Condition 13.6, no statutory or other warranty, condition or representation of any kind whatsoever (including without limitation any relating to quality, suitability or fitness for any purpose of the Customer) is given or to be implied and the only warranties conditions or representations made are those expressly stated to be such and contained in these Conditions

13.6. Nothing in these Conditions shall:

(a) Limit or exclude the respective rights and remedies of Amberley and the Customer under the Unfair Contract Terms Act 1977; or

(b) exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979 and where the Customer deals as a consumer the conditions implied by Sections 13 to 15 inclusive of the said Act and by Sections 3 and 4 of the Supply of Goods and Services Act 1982

14. TERMINATION

14.1. Amberley may give written notice to the Customer terminating the Contract and separately any other contract for the supply of goods or services by Amberley to the Customer (“relevant contracts”) with immediate effect if:-

(a) the Customer is in material breach of the terms of any relevant contract and (in the case of a breach capable of remedy) shall have failed to remedy such breach within 30 days of the receipt of a request in writing from Amberley requiring such a breach to be remedied;

(b) the Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors or a petition is presented or an order is made for the Customer to become bankrupt or in the case of a partnership a winding up or administration order is made in respect of that partnership; or

(c) the Customer (being a limited company) has an administrative receiver or a receiver and manager appointed of the whole or any part of its undertaking, property or assets or a petition is presented or an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Customer or for the appointment of an administrator thereof

15. EFFECTS OF TERMINATION

15.1. Upon termination of this Contract howsoever arising the provisions of this Condition 15 shall apply

15.2. Notice of termination shall be without prejudice to any other rights or remedies

15.3. Amberley may declare immediately payable (and so interest-bearing under Condition 7.3 (c)) any sums owed by the Customer under any relevant contract, proceed against the Customer for the same and/or damages, and appropriate any payment by the Customer as Amberley thinks fit (notwithstanding any purported appropriation by the Customer)

15.4. The parties shall be discharged from any liability for further performance of the Contract and Amberley shall be entitled to enter any of the Customer’s premises and recover the Goods, any part of them or any equipment and materials the property of Amberley (and so that the Customer hereby irrevocably licences Amberley, its employees and agents to enter such premises for that purpose)

15.5. The Customer shall pay to Amberley at the Contract rate for all work done, materials used and Goods and Services supplied up to and including the date of termination and shall in addition

indemnify Amberley against any resulting loss, damage or expense incurred by Amberley in connection with the supply or non-performance of the Contract including the cost of any material, plant or tools used or intended to be used therefor and the cost of labour and other overheads including a percentage in respect of profit

15.6. Amberley shall be entitled to take possession of and deal with (including the sale of) any materials and other assets of the Customer held by or on behalf of Amberley and apply any proceeds of sale in payment of any sums owing under or damages arising in connection with any relevant contract including any interest and costs arising thereon. Without limitation to the generality of the foregoing Amberley may retain any original or copy artwork, plates, paper, films, tapes and other materials of the Customer and produce duplicates of and from the same (whether in whole or in part) for resale at such price as Amberley shall in its discretion determine and in such quantities so as to realise sufficient funds to compensate Amberley for all loss and damage suffered by it (including interest and costs thereon) by reason of the Customer's breach, the Customer hereby grants Amberley an irrevocable non-exclusive royalty-free licence to copy use produce sell and distribute such works and materials and shall indemnify Amberley against any claim loss damage cost or expense suffered by it as a result of any such actions being in breach of the Customer's or a third party's rights or entitlements

16. GENERAL

16.1. No delay, neglect or forbearance on the part of either Amberley or the Customer in enforcing against the other party any of the terms of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract. Any waiver to be effective must be in writing and signed by an authorised officer or representative of Amberley or the Customer

16.2. Any notices to be given under these Conditions shall be sent either by hand by first class post or by fax to the address of the relevant party and shall be deemed to have been served at the time of delivery if by hand 48 hours after posting or following transmission by fax (confirmed by letter sent by post) and in proving the fact of posting it shall be sufficient for the party giving the notice that the envelope containing the notice was properly addressed, stamped and posted

16.3. If any part, term or provision of these Conditions, not being of a fundamental nature, be held illegal or unenforceable, the validity or enforceability of the remainder of these Conditions shall not be affected

16.4. Headings have been included for convenience only and shall not be used in construing any provision of these Conditions

16.5. These Conditions may only be modified by a written agreement duly signed by an authorised officer or representative of the Customer and Amberley

16.6. These Conditions shall be governed by, construed and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales