



## Imago USA TERMS OF PURCHASE

### 1. DEFINITIONS

In these conditions the "Company" means Imago Sales (USA), Inc. The "Customer" means the person, firm or company purchasing goods from the Company. "Contract" means the contract of sale between the Company and the Customer, "Goods" means any books, printed material, software, toys and other goods and services forming the subject matter of the contract. "Contract price" means the price of the Goods.

### 2. APPLICABILITY OF CONDITIONS

These terms and conditions together with any terms in the written quotation without any modification by the Customer, shall be embodied in any contract based on or arising from the Company's quotation, or any quotation made on the Company's behalf, unless otherwise specifically agreed in writing, to the exclusion of any other terms, conditions and warranties (whether written or oral, express or implied) even if contained in any of the Customer's documents which purport to provide that the Customer's own terms or conditions shall prevail. These terms and conditions shall supercede any other terms or conditions, and no addition, amendment or modification of these terms and conditions shall be effective unless it is in writing and signed and/or accepted by a duly authorized representative of the Company.

### 3. PRICES

Prices are based upon current costs of manufacture and materials, and apply strictly to the specification and quantity given in the quotation. All prices are quoted subject to sight of Customer's materials and subject to confirmation at time of order. Unless otherwise stated, all couriers, postage, carriage, freight, safety training, taxes, and customs duties are payable by the Customer. Prices quoted in the Company's Quotation may be amended due to currency exchange rate fluctuations. The cost of all author's corrections, alterations to style, and additional proofs necessitated by such corrections and alterations will be added to the Contract price.

ANY PRELIMINARY WORK FOR WHATEVER PURPOSE WHETHER EXPERIMENTAL OR NOT MAY BE CHARGED TO THE CUSTOMER.

### 4. PROOFS

Proofs may be submitted for all jobs at the Customer's request. Proofs signed as approved by the Customer will be considered passed for press and no responsibility can be accepted for errors not corrected by the Customer. Because of the difference in equipment/conditions between the color proofing and pressroom operations, a reasonable variation in color between the proofs and completed job shall be accepted by the customer.

### 5. DELIVERY AND PAYMENT

Prices quoted by the Company are strictly net and fall due for payment within 30 days of dispatch of the Goods unless otherwise agreed. Delivery of Goods by the Company to the Customer shall at all times be subject to INCO 2000 term which are incorporated herein as referred to in the Company's Quotation. Any loss or damage in transport which may give rise to an insurance claim must be reported by the Customer to the Company within a reasonable time and in any case not later than 14 days from receipt by the Customer of the Goods. If the Customer shall fail to give such notice the consignment of Goods shall be conclusively presumed to be complete and undamaged.

Passing of title:

- a) neither legal nor beneficial title to the Goods will pass to the Customer until:
  - i. the Customer has paid to the Company all sums due and payable from the Customer to the Company (including debts arising before the date of the Contract); or
  - ii. the Company serves on the Customer notice in writing to that effect; or whichever shall happen first.

(b) The Customer hereby irrevocably licenses the Company, its servants and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that condition (c) below is complied with by the Customer and/or, if the Company has terminated the Customer's right of resale pursuant to condition (e) below, for the purposes of recovering any Goods in respect of which property has not passed to the Customer.

(c) Until title to the Goods has passed to the Customer, Customer shall possess the goods as a bailee of the Company, the terms of the bailment being governed by this contract. If the Company so requires, the Customer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company.

(d) The Customer's right of resale may be terminated by the Company upon oral or written notice to the Customer immediately if the Customer defaults in payment of any sum when due and shall automatically cease if the Customer becomes insolvent, or enters into liquidation, whether voluntarily or compulsorily; applies or consents to the appointment of an administrative receiver, administrator, trustee, agent, custodian, assignee or liquidator of any of its property; or is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature; or makes a general assignment for the benefit of creditors; voluntarily commences any proceeding or files any petition seeking relief under Chapter 11 of the United States Code or any other bankruptcy, insolvency, or similar law, or an involuntary proceeding shall be started against it, or a substantial part of its property, under Chapter 11 of the United States or any other

bankruptcy, insolvency or similar law. At any time after the termination of sale, the Company may repossess the Goods and the Customer hereby grants to the Company an irrevocable license to enter upon any premises of the Customer or its agents for the purpose of doing so.

(e) The Customer shall not be entitled to pledge or grant any security in any way for any indebtedness over or in respect of any of the Goods so long as the goods remain the property of the Company.

(f) Notwithstanding the provisions of sub-clauses (d) and (e), the Company shall, if it retakes the Goods and resells them, account to the Customer for the balance (if any) as determined pursuant to the sub-clause (g).

(g) The balance in respect of which the Company shall account to the Customer in the circumstances specified in sub-clause (f) shall be the proceeds of sale of the Goods less:

- i. (the the expenses of resale; and
- ii. the Company serves on the Customer notice in writing to that effect; or whichever shall happen first.

The Company will use all reasonable endeavors to deliver the Goods to the Customer by the date agreed, but time is not to be the essence of any contract in so far as delivery is concerned and the Customer will not be entitled to cancel the contract or to any compensation for late delivery. Should any suspension or delay by the Customer halt production for more than 30 days, the Company will be entitled to charge for work already completed and for materials ordered in connection with the Goods.

The Company shall be entitled, on notice to the Customer, to make partial deliveries and partial deliveries shall be no ground for the cancellation of the contract or the remainder thereof. In the event that the Company makes partial deliveries the Customer shall pay for the Goods so delivered within 30 days of dispatch of the Goods unless otherwise agreed.

The Company shall use all reasonable endeavors to deliver the quantity ordered by the Customer, but in accordance with international trade practice, over or under delivery of up to 5% shall constitute good delivery, and the Company will bill for the actual quantity delivered within this tolerance.

If payment by the Customer to the Company is overdue at any time under any other contract of sale between them the Company shall have the right to suspend production or withhold delivery under this Contract until such payment has been made, and the Company shall incur no liability of any kind to the Customer in the exercise of this right.

The Customer agrees to pay all reasonable costs, fees and expenses of Company (including reasonable attorneys fees) in connection with the enforcement or defense of the terms of this Terms of

Purchase. Customer shall be charged simple interest on any amount owed for more than twenty-eight (28) days at the greater of (a) the applicable mid term federal rate published by the United States Treasury Department for the month in which the default occurs, plus ten (10) percentage points, and (b) twenty-four (24%) percent per annum, EXCEPT THAT no interest charged hereunder shall be payable by any natural person in excess of any applicable usury law.

## **6. CUSTOMER'S MATERIALS**

The Customer warrants that any component part supplied to the Company has been checked for safety and fitness for purpose.

Customer's materials will subject to paragraph 7, be held and transported at the Customer's risk. The Company will not be liable for any loss or damage to Customer's materials while held by the Company or the Company's agents or while in transport.

Where property is supplied to the Company by or on behalf of the Customer it will be delivered in sufficient quantities to cover normal spoilage and shall be held, worked on, and carried at the Customer's risk.

The Company reserves the right to reject Customer's materials which it considers unsuitable. A reasonable charge will be made for materials found to be unsuitable during manufacture. Claims for imperfect manufacture due to unsuitable Customer's materials cannot be accepted.

## **7. MATERIALS FOR ORIGINATION**

The Company hereby disclaims liability and is not insured for loss or damage to transparencies, artwork, layouts, or any other materials in physical or digital form howsoever supplied or transmitted by the Customer while in the Company's possession or control, and is not insured in respect thereof.

The Customer hereby warrants that no reproduction, alteration, storage or use of words and images or any other information, data or material by the Company at the Customer's request will infringe in any way any copyrights, licenses or other rights and that any screen or printer fonts, data or picture files supplied by the Customer to the Company shall comply with the software vendors' site license and/or any other copyright or other agreements. The Customer hereby agrees to defend and indemnify the Company in respect of all claims, actions, proceedings, liability, loss, damage, reasonable counsel fees, costs and expenses arising out of any claim that the copying, processing or use of such words or images or other material, or any such fonts or other software supplied to the Company for processing, constitute an infringement of any trademark, copyright or license, or any other rights of third parties.

Digital storage: If the Customer requires materials to be stored as digital information, this request must be made in writing at time of order to ensure that the work is processed in a manner compatible with digital storage. Any such request made subsequently may result in extra charges. As it is possible for corruptions to occur during the process of downloading digital files from the system to

storage media, it is the responsibility of the Customer to check all files of digital information supplied by the Company immediately on receipt. In the event that any file proves to be corrupted, the Company will replace such corrupted files free of charge provided that the Customer notifies the Company in writing within 28 days of receipt of any such corrupted file, that the file containing the corruption is returned, and that the fault is clearly demonstrated.

The Company will accept no liability for any problems Customer may have in reading digital storage media due to faults or unsuitability of the Customer's equipment, nor for degradation of storage media itself for whatever reason such has or will occur.

The Company will accept no liability whatsoever for any problem reported regarding digital files supplied to the Customer if more than 28 days have elapsed since such digital files were received by the Customer.

## **8. STANDING MATERIALS**

All Customer's materials supplied to the Company will remain the Customer's property and will be returned at customer's risk and expense after use or payment of the Company's invoice at Company's option. All Customer materials will be stored by the Company at the Customer's risk. The Company reserves the right to make extra charges for such storage of Customer's materials. All materials generated by the Company from Customer's materials which do not form part of the finished product will remain the Company's property.

## **9. DEFECTS**

a) Except in the following circumstances, the Company gives no warranty or condition, express or implied, statutory or otherwise of materials, workmanship or fitness for purpose of the Goods.

b) Defects in the Goods attributable to faulty materials or faulty workmanship must be notified to the Company in writing within 28 days of receipt of the Goods, time being of the essence to establish liability.

c) In the event of less than 3% of the Goods being found to contain defects attributable to faulty materials or workmanship such that under reasonable market conditions they shall be in the Company's reasonable opinion commercially unacceptable, the Company will credit the Customer with its charges for such defective Goods.

d) In the event of more than 3% of the Goods being found to contain defects attributable to faulty materials or workmanship such that under reasonable market conditions they shall be in the Company's reasonable opinion commercially unacceptable, the Company shall have the option to either recover, repair or replace the defective Goods, or to credit the Customer with its charges for such defective Goods

**10. LIMITED WARRANTY; LIMITATIONS ON LIABILITY.** The Company warrants solely that, subject to the terms, conditions and limitations of these Terms of Purchase, the goods will be manufactured utilizing the standards of care normally and customarily exercised by printing firms in providing

comparable goods. COMPANY MAKES NO OTHER WARRANTIES AND GIVES NO OTHER ASSURANCES OR GUARANTEES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY GOODS THAT ARE PROVIDED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY. WITHOUT IN ANY WAY LIMITING THE FOREGOING, THE COMPANY DOES NOT WARRANT, ASSURE OR GUARANTEE THAT ANY GOODS THAT ARE PROVIDED WILL BE ERROR FREE OR COMPLY WITH THE REQUIREMENTS OF ANY LAW, RULE OR REGULATION, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE GOODS CONTAINED HEREIN.

THE COMPANY'S SOLE LIABILITY IN CONNECTION WITH ANY GOODS THAT ARE DEFECTIVE SHALL BE LIMITED TO EITHER (i) REFUNDING TO THE CUSTOMER A PERCENTAGE OF THE TOTAL PRICE (EXCLUSIVE OF TAXES, SHIPPING, TRANSPORTATION, POSTAGE AND OTHER SEPARATE CHARGES) THAT THE CUSTOMER HAS PAID TO THE COMPANY FOR ALL GOODS PROVIDED EQUAL TO THE PERCENTAGE OF ALL GOODS PROVIDED THAT ARE DEFECTIVE DUE TO THE SOLE FAULT OF THE COMPANY, OR (ii) AT THE COMPANY'S OPTION, REPLACING FOR THE CUSTOMER, AT NO CHARGE TO THE CUSTOMER, THE GOODS PROVIDED THAT ARE DEFECTIVE OR DELIVERED LATE DUE TO THE SOLE FAULT OF THE COMPANY. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR (i) ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, INTEREST, LOST PROFITS OR INTERRUPTION OF BUSINESS), EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES RESULT FROM ANY RECOMMENDATIONS MADE BY THE COMPANY, (ii) ANY LOSSES, DAMAGES, LIABILITIES, SUITS OR CLAIMS THAT ARE COVERED BY ANY INSURANCE MAINTAINED BY OR ON BEHALF OF THE CUSTOMER OR ARE OTHERWISE RECOVERABLE FROM THIRD PARTIES, (iii) ANY GOODS THAT ARE DEFECTIVE FOR ANY REASON THAT IS NOT WHOLLY THE FAULT OF THE COMPANY, (iv) ANY ERROR, ACT OR OMISSION OF THE UNITED STATES POSTAL SERVICE OR ANY OTHER THIRD-PARTY DELIVERY SERVICE. IN ADDITION, THE LIABILITY OF THE COMPANY FOR LOSSES, DAMAGES, LIABILITIES, SUITS AND CLAIMS, REGARDLESS OF THE FORM OF ACTION (WHETHER BASED ON CONTRACT, OR NEGLIGENCE, OR ON STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED) AND THE PERSON OR ENTITY BRINGING SUCH ACTION, SHALL NOT SEEK TO RECOVER, IN THE AGGREGATE, THE TOTAL AMOUNT (EXCLUSIVE OF TAXES, SHIPPING, TRANSPORTATION, POSTAGE AND OTHER SEPARATE CHARGES) ACTUALLY PAID TO THE COMPANY BY THE CUSTOMER FOR THE GOODS IN QUESTION. ANY

ACTION AGAINST THE COMPANY ARISING OUT OF, RESULTING FROM, OR RELATED TO ANY GOODS PURCHASED HEREIN MUST BE BROUGHT NO LATER THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES.

#### **11. PRODUCT SAFETY**

a) Sole responsibility for ensuring that the Goods can be legally offered for sale or sold, and have been tested to applicable safety and environmental standards for the market in which they are to be sold rests with the Customer and the Company accepts no liability of any kind to the Customer in these respects.

b) If and whenever the Customer requests the Company to arrange product testing on its behalf (whether or not at the Customer's expense) or the Company does so upon its own initiative, the Company accepts no liability or other responsibility of any kind to the Customer for anything not disclosed by such testing.

c) The Customer hereby agrees to defend and indemnify the Company in respect of all claims, actions, proceedings, liability, loss, damage, costs, reasonable counsel fees, and expenses arising out of any breach, or claimed breach, of the above warranty.

#### **12. ILLEGAL AND LIBELOUS MATTER**

The Company shall not be required to print any matter which it considers is, or may be, illegal, immoral, indecent, scandalous, libelous, invades any person's right to privacy or may otherwise give rise to legal proceedings. The Customer hereby warrants that no matter or materials which it requires or causes the Company to print or possess shall be in any way whatever an infringement of any copyright, patent, trade mark, or design or other right, and contains nothing defamatory, obscene, indecent, blasphemous, objectionable, that invades any person's right to privacy or is in any other way illegal or in breach of any duty or obligation of confidence. The Customer hereby agrees to defend and indemnify the Company in respect of all claims, actions, proceedings, liability, loss, damage, costs, reasonable counsel fees, and expenses arising out of any breach, or claimed breach, of the above warranty.

#### **13. FORCE MAJEURE**

The Company shall not be liable for any delay or failure in its obligations which is caused wholly or partly by reason of Act of God, delay in transportation, labor disputes, fire, flood, war, drought, accident, government action, inability to obtain adequate labor, materials, manufacturing facilities or energy, or any other cause beyond the Company's control or that of its servants or agents, and if the delay or failure has continued for a period of 12 weeks then either party may elect to give notice in writing to the other party terminating the contract and then the Customer will pay for work done and materials used. Subject to this right to elect, the contract shall otherwise continue and the Customer shall accept delivery in accordance with the provisions of Clause 5.

#### **14. LAW AND INTERPRETATION**

This contract and any dispute disagreement or controversy between the Company and Customer shall be governed by the laws of the State of New York and the parties hereby consent to the exclusive jurisdiction of the Supreme Court of New York, County of New York or the United States District Court for the Southern District of New York.

#### **15. WAIVER OF TRIAL BY JURY**

The Company and Customer hereby waive a trial by Jury as to any dispute, disagreement or controversy arising hereunder.

#### **16. ENTIRE AGREEMENT**

Purchase of goods from the Company is limited to these terms and conditions. Any change to these Terms of Purchase, including these terms and conditions, by Customer and any different or additional terms proposed by Customer in any request for proposal, in any purchase order, or otherwise, shall be deemed to have been objected to by the Company, shall be of no force or effect, and shall not be binding upon or enforceable against the Company. These Terms of Purchase constitute the entire agreement and understandings and communications with Customer, oral or written, relating to goods purchased, and the Company will not be bound by or subject to any promise, warranty, representation, inducement or agreement, oral or written that is not set forth in these Terms of Purchase. No course of dealing or course of performance shall be relevant or admissible by Customer to supplement, explain or vary the terms and conditions of these Terms of Purchase. The invalidity or enforceability of any term or condition of these Terms of Purchase, and the remaining terms and conditions of these Terms of Purchase shall remain in full force and effect. No waiver, amendment or modification of these Terms of Purchase shall be binding upon or enforceable against the Company until approved in writing by and authorized the Company signatory.

August 2009