

James Aimer Limited - Standard Conditions of Sale

1 Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

“Company”	means James Aimer Limited, a company registered under the Companies Acts (registered number SC242232), and having a place of business at Milnbank Works, Milnbank Road, Dundee, DD1 5QE;
“Contract”	means any contract between the Company and the Customer for the sale and purchase of Goods, incorporating these conditions;
“Customer”	means the person, firm or company who purchases Goods from the Company;
“Delivery Point”	means the place where delivery of the Goods is to take place under condition 6;
“Goods”	means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);
“Managing Director”	means the Company’s managing director from time to time;
“Special Print Order”	means the bespoke packaging and labelling service provided by the Company; and
“Special Print Order Form”	means the Company’s form is to be completed by Customers when requesting a Special Print Order.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2 Application of Terms

2.1 Subject to any variation under condition 2.3, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company’s sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed for and on behalf of the Company by the Managing Director. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company’s liability for fraudulent misrepresentation.

2.4 Where a Customer requests a Special Print Order or requests that the Company stocks a particular product or products, additional terms and conditions shall apply and these shall be deemed to form part of the Contract provided that the Company has given the Customer notice of such additional terms and conditions. In the case of a Special Print Order, these additional terms and conditions shall be set out on the Special Print Order Form.

3 Quotations and Prices

3.1 Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these conditions.

- 3.2 No order placed by the Customer shall be deemed to be accepted by the Company until the Company delivers the Goods to the Customer.
- 3.3 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 3.4 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 3.5 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price set out in the Company's price list published on the date of delivery or deemed delivery.
- 3.6 Notwithstanding the terms of condition 3.5, the Company reserves the right, by giving written notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase on the costs of labour, materials, transport 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 the Company adequate information or instructions.
- 3.7 The price for the Goods shall be exclusive of any value added tax (VAT).
- 3.8 Unless otherwise stated and without prejudice to clause 3.9, the price for the Goods shall be inclusive of all costs or charges in relation to packaging, loading, unloading and insurance.
- 3.9 With regard to carriage costs:
- 3.9.1 where the price for the Goods exceeds £100 and the Goods are to be delivered to any part of the mainland of Scotland, England or Wales, the price for the Goods shall be inclusive of carriage costs;
- 3.9.2 where the price for the Goods is £100 or less and the Goods are to be delivered to any part of the mainland of Scotland, England or Wales, a handling charge shall be levied by the Company in addition to the price for the Goods; and
- 3.9.3 where the Goods are to be delivered to a place that is outside of the mainland of Scotland, England or Wales, the price for the Goods shall be exclusive of all carriage costs.
- For the avoidance of doubt, the Company reserves the right not to accept any order with a value of £100 or less.

4 Description of Goods

- 4.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

5 Payment

- 5.1 Payment of the price for the Goods shall be made in pounds sterling (£) (except as otherwise agreed in respect of export orders) and shall be paid:
- 5.1.1 at the time that the order is made by the Customer; or
- 5.1.2 where credit terms have been agreed between the Company and the Customer, within 30 days of the date of the invoice unless otherwise stated on the face of the invoice,
notwithstanding that delivery may not have taken place and/or that ownership of the Goods has not passed to the Customer under condition 6.
- 5.2 Time for payment shall be of the essence.
- 5.3 No payment shall be deemed to have been received until the Company has received full payment in cleared funds.
- 5.4 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Company may:
- 5.4.1 cancel the Contract or suspend delivery of any Goods ordered by the Company which have not been delivered with incurring liability to the Customer;
- 5.4.2 appropriate any payment made by the Customer to such of the Goods as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- 5.4.3 charge the Customer interest on the amount unpaid from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Royal Bank of Scotland plc, accruing on a daily

basis until payment is made, whether before or after any judgment, and the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

- 5.5 All payments payable to the Company under the Contract shall become due immediately on its termination, notwithstanding any other provision.
- 5.6 The Company shall have a right of set-off against any sums due to the Customer by the Company or any company of which the Company is a subsidiary (its holding company) and any other subsidiaries of any such holding company ("subsidiary" having the meaning given to it in section 1159 of the Companies Act 2006).

6 Delivery

- 6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 6.2 The Customer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 6.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 6.4 Subject to the other provisions of these conditions, the Company shall not be liable for any direct or indirect loss (which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 6.5 If, for any reason, the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, the Company may:
- 6.5.1 store the Goods until delivery, whereupon the Customer shall be liable for all reasonable related costs and expenses (including, without limitation, storage and insurance); or
- 6.5.2 sell the Goods at the best price readily obtainable and charge the Customer for any shortfall below the price under the Contract.
- 6.6 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 6.7 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 6.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall constitute a separate Contract and no failure by the Company to deliver any one or more instalments and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

7 Non-Delivery

- 7.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 7.2 The Company shall not be liable for any non-delivery of Goods unless the Customer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 7.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

8 Risk and Title to Goods

- 8.1 The Goods are at the risk of the Customer from the time of delivery.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 8.2.1 the Goods; and
- 8.2.2 all other sums which are or which become due to the Company from the Customer on any account.
- 8.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 8.3.1 hold the Goods as the Company's fiduciary agent;

- 8.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 8.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request, the Customer shall produce the policy of insurance to the Company.
- 8.4 The Customer's right to possession of the Goods shall terminate immediately:
- 8.4.1 upon the occurrence any of the events listed at condition 9.1; or
 - 8.4.2 if the Customer fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer; or
 - 8.4.3 the Customer encumbers or in any way charges any of the Goods.
- 8.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 8.6 The Customer grants the Company, its officers, employees, representatives or agents an irrevocable licence at any time to enter any premises where the Goods are or may be stored (with or without vehicles) in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 8.7 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 8.8 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 8 shall remain in effect.

9 Insolvency of Customer

- 9.1 This condition 9 applies if:
- 9.1.1 the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes sequestrated or bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or
 - 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer (including the Goods); or
 - 9.1.3 any other proceedings are commenced relating to the insolvency or possible insolvency of the Customer;
 - 9.1.4 the Customer ceases, or threatens to cease, to trade or carry on business; or
 - 9.1.5 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 9.2 If this condition applies then, without limiting any other right or remedy available to the Company (including the right to claim damages for any loss suffered), the Company may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, 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.

10 Quality

- 10.1 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 10.2 The Company shall not be liable for a breach of the warranty in condition 10.1 unless:
- 10.2.1 the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Customer discovers or ought to have discovered the defect or, where the defect was not apparent on reasonable inspection, within a reasonable time after discovery of the defect; and
 - 10.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there.
- 10.3 The Company shall not be liable for a breach of the warranty in condition 10.1 if:
- 10.3.1 the Customer makes any further use of such Goods after giving such notice; or
 - 10.3.2 any defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

- 10.3.3 any defect arises from fair wear and tear or owing to the Customer's negligence, misuse or abnormal working conditions; or
- 10.3.4 the Customer alters or repairs such Goods without the prior written consent of the Company; or
- 10.3.5 the total price for the Goods has not been paid by the due date for payment.

- 10.4 Subject to condition 10.2 and condition 10.3, if any of the Goods do not conform with the warranty in condition 10.1, the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall return the Goods or the part of such Goods which is defective to the Company.
- 10.5 If the Company complies with condition 10.4, it shall have no further liability for a breach of the warranty in condition 10.1 in respect of such Goods.

11 Limitation of Liability

- 11.1 Subject to conditions 6, 7 and 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - 11.1.1 any breach of these conditions;
 - 11.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - 11.1.3 any representation, statement or delictual act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes or limits the liability of the Company:
- 11.4 for death or personal injury caused by the Company's negligence; or
 - 11.4.1 for defective products under the Consumer Protection Act 1987; or
 - 11.4.2 for fraud or fraudulent misrepresentation; or
 - 11.4.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 11.5 Subject to conditions 11.2 and 11.3:
 - 11.5.1 the Company's total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - 11.5.2 the Company shall not be liable to the Customer for loss of profit, loss of business or depletion of goodwill, in each case whether direct or indirect, which arise out of or in connection with the Contract.

12 Force Majeure

The Company reserves the right to defer the date of delivery or to vary or cancel the Contract or to reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), power failure or breakdown in machinery or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

13 Assignment

- 13.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 13.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

14 General

- 14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15 Communications

- 15.1 All communications between the parties about or relating to the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- 15.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- 15.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 15.2 Communications shall be deemed to have been received:
- 15.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 15.2.2 if delivered by hand, on the day of delivery; or
- 15.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 15.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.

16 Governing Law

The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Scots law and the parties submit to the exclusive jurisdiction of the Scottish courts.

I/We _____

Being authorised person(s) of _____ (“The customer”) agree that all transactions of sale will be conducted according to these Standard Conditions of Sale. Please pay particular attention to our Payment Terms.

Print name _____ Position _____

Signature _____ Date _____