



Terms and Conditions

1. Definitions

In these Terms and Conditions, and in the attached Quotation, the following definitions apply:

"Consumables" - parts which are designed or are expected to be replaced periodically.

"Contract" - the contract between Inca and the Customer to which these Terms and Conditions apply and includes the terms in the Quotation and any service plan or other document referred to in the Quotation.

"Customer" - the company, individual, partnership or organisation to which the Quotation is addressed.

"Equipment" - Inca flatbed printers and ancillary equipment.

"Goods" - any goods, software, equipment or documentation that Inca agrees to supply to the Customer under the terms of the Contract.

"Inca" - Inca Digital Printers Limited.

"Printheads" - active jetting components of the Equipment, normally handled in the form of Printhead assemblies containing multiple printheads, electronics and ink supply components.

"Quotation" - the documentation setting out a quotation for the Goods and/or Services to be provided to the Customer by Inca, attached to or referring to these Terms and Conditions which is valid for 30 days from the date of issue by Inca.

"Service Contract" - any service contract agreed between the parties incorporating these Terms and Conditions.

"Work" - any work or services that Inca agrees to perform under the terms of the Contract or Service Contract.

2. Confidentiality

The Customer shall take all reasonable measures to hold in confidence all information and ideas obtained from Inca that are identifiable as confidential or secret. The obligation of confidentiality shall remain for five years from the date of the Contract. This condition does not apply to ideas and information that:

- are in or pass into the public domain by means other than by breach of the Contract,
- are already in the possession of the Customer at the date of the Contract or are independently developed by it without reference to Inca's confidential information, or
- are rightfully obtained by the Customer from a third party with the full right to disclose, or
- are required to be disclosed by law by way of court order or order of any governmental or regulatory authority.

3. Customer Responsibilities

3.1. Inca may from time to time require resources from the Customer (e.g., instructions, information, specifications, goods, materials, access to personnel and facilities) in order to carry out the Contract. The Customer shall provide such resources to Inca in a timely manner and ensure that such instructions, information, specifications and materials are accurate in all material respects. If Inca incurs extra costs because of a delay by the Customer in providing such resources, the Customer agrees to pay all reasonable additional charges arising from such delay. This does not prejudice any of Inca's other rights.

4. Liability

4.1. If causes outside of Inca's reasonable control give rise to a delay in meeting, or a failure to meet, Inca's obligations under the Contract, Inca shall not be held liable. In the event of any such delay the time for carrying out the Contract shall be extended accordingly. Inca will use reasonable endeavours to complete the work in the estimated time, but cannot guarantee to do so.

4.2. Inca warrants that all Work shall be performed by competent professionals and provided in a reasonably competent manner. However, as Inca's Work may involve the development of new technology, prototype devices or equipment, Inca does not warrant or guarantee that any Goods Inca supplies to the Customer will be error free or operate or perform in accordance with the Quotation.

4.3. Inca warrants that it will perform the Work with reasonable care and skill.

4.4. Inca's liability to the Customer for any loss or damage, howsoever arising, in connection with the Contract shall be as follows:

- 4.4.1. for death or personal injury caused by Inca's proven negligence or for fraud, Inca's liability shall be unlimited;
- 4.4.2. for losses which are covered by Inca's insurance policies, Inca's liability shall not exceed the amount covered by the relevant policy. Details of the level of cover under such policies are available on request;
- 4.4.3. for all other direct loss or damage Inca's liability to the Customer shall not exceed the amount which the Customer pays Inca for carrying out the Contract;

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- 4.4.4. Inca does not accept any liability for:
- 4.4.4.1. loss of business revenues, profits, goodwill or reputation, loss of opportunity and/or other similar losses (whether direct or indirect),
 - 4.4.4.2. any indirect, unforeseeable or consequential loss or damage, or
 - 4.4.4.3. losses or expenses resulting from third party claims except to the extent covered by Inca's insurance policies in which case Clause 4.4.2 shall apply.
- 4.5. The Customer shall have no right to reject the Goods for any defect unless the Customer has given Inca notice specifying the alleged defect within fourteen (14) days of delivery of the Goods or, where Goods are installed and commissioned by Inca or its representatives, within fourteen (14) days of commissioning of the Goods.
- 4.6. Save for the first £100,000 of any liability and any such liability for death or personal injury resulting from Inca's proven negligence or fraud, the Customer shall indemnify Inca against any liability which Inca may be under to any third party resulting from the performance of the Contract or use of Goods or results produced.
- 4.7. Except as specified in the Contract all warranties, conditions, terms and representations implied by statute, trade usage or otherwise are hereby excluded to the fullest extent permitted at law. All express warranties, conditions, terms and representations are included and set out in writing in the Contract. All Printheads and consumables supplied by Inca are covered by the terms of Inca's warranty set out in the Inca Parts Warranty (*SR0026 Parts Warranty for New Flatbed Products*) as amended by Inca from time to time.
- 4.8. Inca warrants that on delivery and for a period of:
- 4.8.1. 12 months from the date of delivery Equipment (excluding any spare parts and Consumables) will be of satisfactory quality; and
 - 4.8.2. 6 months from the date of delivery spare parts supplied by Inca (excluding any Consumables) will be of satisfactory quality.
- 4.9. In the event of a breach of the warranty contained in clause 4.8 the terms of the Inca Parts Warranty (*SR0026 Parts Warranty for New Flatbed Products*) shall apply.
- 4.10. The quality and description of the Goods shall be as set out in the Quotation. All samples, drawings, descriptive matter, specifications and advertising issued by Inca and any descriptions or illustrations contained in Inca'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. Safe Conditions of Work

To the extent that Inca are able, Inca shall carry out the Work with proper regard to safety of personnel and Inca will observe all statutory enactments and regulations regarding safe conditions of work applicable to the Work or the site where the Work is carried out. Inca expects the Customer to provide a safe working environment for Inca employees and representatives and to conform to all relevant laws and regulations. Inca will observe the rules for safe working on the Customer's site where Inca has been informed in writing of such conditions in advance of any visit to the Customer's site. Inca and the Customer each reserve the right to stop work if either has reasonable grounds to believe that a safe working environment is not being provided and to notify the other of the problem.

6. Title and Risk

- 6.1. As soon as the Goods are delivered to the Customer or its carrier, or delivery is deemed to have occurred, the Customer shall insure all such Goods to their full value against all reasonably foreseeable risks. This requirement stands even if title has not yet passed to the Customer. Claims for non-delivery must be made within fourteen (14) days of receiving notification of despatch.
- 6.2. Ownership of the Goods shall not pass to the Customer until Inca has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.
- 6.3. Until ownership of the Goods has passed to the Customer, the Customer shall:
- 6.3.1. hold the Goods on a fiduciary basis as Inca's bailee;
 - 6.3.2. store the Goods (at no cost to Inca) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Inca's property;
 - 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 6.3.4. maintain the Goods in satisfactory condition and keep them insured on Inca's behalf for their full price against all risks to the reasonable satisfaction of Inca. On request the Customer shall produce the policy of insurance to Inca.
- 6.4. The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.4.1. any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - 6.4.2. any such sale shall be a sale of Inca's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 6.5. The Customer's right to possession of the Goods shall terminate immediately if:
- 6.5.1. the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to

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the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

6.5.2. the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Inca and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

6.5.3. the Customer encumbers or in any way charges any of the Goods.

- 6.6. Inca shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Inca.
- 6.7. The Customer grants Inca, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 6.8. Where Inca 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 Inca to the Customer in the order in which they were invoiced to the Customer.
- 6.9. On termination of the Contract, howsoever caused, Inca's (but not the Customer's) rights contained in this clause 6 shall remain in effect.

7. Delivery

- 7.1. Unless otherwise agreed in writing by Inca, delivery of the Goods shall take place at Inca's place of business.
- 7.2. The Customer shall take delivery of the Goods within seven (7) days of Inca giving it notice that the Goods are ready for delivery.
- 7.3. The Works shall be provided by Inca or its representatives at such place and on such date as is specified in the Contract or as otherwise agreed by the parties in writing.
- 7.4. Any dates specified by Inca for delivery of the Goods and/or Works are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are specified, delivery shall be within a reasonable time.
- 7.5. Inca may arrange for delivery of Goods by a third party courier to an address specified by the Customer. In such circumstances the Goods will be at the risk of the Customer from the point of being collected by the courier. The Customer shall be liable for payment of all carriage, insurance, import and export charges, taxes and any other charges levied against the Goods.
- 7.6. If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Inca is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 7.6.1. risk in the Goods shall pass to the Customer;
- 7.6.2. the Goods shall be deemed to have been delivered; and
- 7.6.3. Inca may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 7.7. Inca may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 7.8. Each instalment shall be a separate Contract 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.
- 7.9. The Customer shall be responsible for complying with any legislation governing the importation of the Goods into the country of destination and the export of the Goods from the United Kingdom. The Customer shall be responsible for the payment of any duties due on import and export of the Goods.

8. Suspension of Work and Termination

- 8.1. If the Customer does not make any or all payments promptly in full as they fall due to Inca or the Customer fails to comply with any other obligation that the Customer has to Inca, Inca shall be entitled to suspend its work for the Customer. The suspension will be without prejudice to any other right which Inca may have and will not give rise to any additional liability on Inca's part. Following such suspension Inca and the Customer shall use reasonable endeavours to negotiate in good faith a solution to any issue that has given rise to the suspension.
- 8.2. Either party may terminate the Contract forthwith if the other party:
- 8.2.1. commits a material breach of the Contract that is incapable of remedy, or
- 8.2.2. fails to remedy any other breach of the Contract within fourteen (14) days of receiving notice of such a breach, or
- 8.2.3. commits an act of bankruptcy, has a petition for its winding-up presented that is not discharged within fourteen (14) days, suffers the appointment of an administrator or receiver for all or any part of its business or assets, enters into any arrangement or composition with its creditors or takes or suffers any similar action in consequence of debt.
- 8.3. Termination shall not affect any rights that either party has accrued up to and on termination.
- 8.4. In the event of termination the Customer shall pay Inca for any Work carried out up to termination on the basis of time incurred and materials used and any Goods delivered to the Customer. Where Inca terminates, as in Clause 8.2 above, the Customer shall also pay Inca for any unavoidable costs incurred thereafter by Inca as a direct result of such termination. The total payment due to Inca under this clause shall not exceed the unpaid balance of the latest agreed Contract price.

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9. Intellectual Property

- 9.1. As between Inca and the Customer all intellectual property rights subsisting in the Goods shall belong to Inca or its licensors.
- 9.2. Inca licences to the Customer any intellectual property rights subsisting in the Goods free of charge on a non-exclusive non-transferable and non-sublicensable basis for use solely in connection with the Equipment.
- 9.3. The Customer shall as soon as reasonably practicable disclose to Inca any improvement, addition, modification or adaptation to any of the Equipment discovered or developed by the Customer ('Improvement').
- 9.4. The Customer acknowledges that any Improvement shall be the exclusive property of Inca and Inca shall grant a royalty free, non-exclusive, non transferable licence to use such Improvements in connection with the Equipment.

10. Offers of Employment

Both Inca and the Customer agree not to solicit any staff engaged on the Contract to leave their employment throughout the duration of the Contract and for a period of one year thereafter.

11. Changes to Terms and Conditions

The terms of the Contract may be altered only by agreement in writing signed by authorised representatives of the parties.

12. Interest

If the Customer is late in making payment of due sums, Inca reserves the right to charge interest from the date on which payment is due at an annual rate of 3% over Barclays Bank plc's base rate from time to time or 6% whichever is the higher. This does not prejudice any of Inca's other rights.

13. Set Off

- 13.1. All amounts due under the Contract shall be paid in full by the Customer without any deduction or withholding other than as required by law.
- 13.2. Inca may set off any liability of it to the Customer against any liability of the Customer to Inca.

14. Severability

If any provision or part of any provision in the Contract shall be invalid or unenforceable for any reason then the parties shall meet promptly to discuss in good faith and agree an alternative that secures, as nearly as may be, the same commercial effect as the original. In such circumstances the remaining provisions or part provisions are unaffected.

15. Assignment

- 15.1. The Customer may not assign, transfer or sub-contract any of its rights or obligations to any third party without Inca's prior written consent.
- 15.2. Work provided under the Contract may, at Inca's discretion, be performed by either Inca or its authorised representatives.
- 15.3. This Contract is assignable or transferable by Inca at the sole discretion of Inca.

16. Entire Agreement

The Contract constitutes the entire agreement between the parties. In the event of any conflict between these conditions and the terms of the Quotation then the terms of the Quotation shall prevail. In entering into the Contract, no party may rely on any representation, warranty or other assurance made by or on behalf of any other party before the date of the Contract and each of the parties waives all rights or remedies which but for this Clause might otherwise be available to it in respect of any such representation, warranty or assurance. Nothing in this Clause shall operate to exclude either party's liability for fraud.

17. Third Party Rights

A person who is not a party to the Contract shall not be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 except where the Contract expressly provides that such a person shall be entitled to enforce any of its terms under that Act.

Without prejudice to the generality of the foregoing third party consent shall not be required to vary, cancel or terminate this Agreement.

18. Force Majeure

Inca shall not be liable to the Customer for any delay in, or failure of, performance of its obligations under the Contract arising from any cause beyond Inca's reasonable control including, without limitation any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion, failure in information technology or telecommunications services, failure of a third party or industrial action or disputes. If the force majeure event continues for a period of thirty (30) days or more Inca may terminate the Contract with immediate effect.

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19. No Partnership or Agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party an agent of the other party, nor authorise any party to make or enter into any commitments on behalf of any other party.

20. Notice

- 20.1. Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier to the address of the receiving party stated in the Contract.
- 20.2. Any notice shall be deemed to have been duly received if delivered personally, when left at the address noted in the Contract, if sent by pre-paid first class post or recorded delivery, at 9.00am on the second business day after posting for notices served in the United Kingdom or five business days after posting in the case of notices served outside the United Kingdom or if delivered by courier, on the date and at the time that the courier's delivery receipt is signed.

21. Governing Law and Jurisdiction

- 21.1. The Contract shall be governed by and construed in accordance with the Laws of England.
- 21.2. Any dispute, controversy or claim arising out of or in relation to the Contract or the breach, termination or invalidity thereof, will be settled by arbitration in accordance with the London Court of International Arbitration rules presently in force. The number of arbitrators will be three, each party to appoint an arbitrator and the arbitrators so appointed to appoint the third,
- 21.3. This place of arbitration shall be London and the language to be used in the arbitral proceedings will be English.
- 21.4. Nothing in this clause 21 shall be construed as preventing Inca from applying to a court to seek an injunction or other equitable relief or taking action to recover any debt due to it.

22. Language

The Contract is drafted in the English language. If the Contract is translated into any other language, the English language text shall prevail.

23. Software Licence

Inca grants to the Customer a royalty free, non-exclusive, non-transferable licence to use any software contained in any Equipment solely for the purpose of operating such Equipment. Such licence shall terminate on the sale, destruction or permanent decommissioning of such Equipment.

The Customer acknowledges that any software contained in any Equipment may contain third party source code which is subject to end user licence provisions which the Customer hereby accepts. In the event the Customer requires any further information in respect of such provisions it should contact Inca directly.

The following Conditions are applicable to Service Contracts:

24. Service Contracts

- 24.1. All Service Contracts offered by Inca for Equipment are valid for a period of 12 months from the Service Contract start date.
- 24.2. An initial payment is due at the time of signing, followed by additional payments in advance over the course of the Service Contract as defined in the payment terms. Failure to meet the payment terms will result in the issue of a notice demanding payment following which if payment is not made within 30 days Inca may terminate the Service Contract with immediate effect. Contract renewals shall be at the prices and terms and conditions in effect at the time of renewal.

25. Customer's Responsibilities

- 25.1. The Customer's responsibilities in the Service Contract include, but are not limited to:
 - 25.1.1. Operating the Equipment and performing all cleaning and preventive maintenance routines as defined in the Equipment User Manual and in any subsequent updates and service bulletins.
 - 25.1.2. Making the Equipment immediately available when requested to Inca representatives for service visits and mandatory upgrades.
 - 25.1.3. Providing Inca representatives with ink, substrate and other Consumables necessary for performing Equipment service.
 - 25.1.4. Providing Inca representatives with full and safe access to the Equipment during service visits.
 - 25.1.5. Implementing changes to operational processes or to the Equipment environment as suggested by Inca.
 - 25.1.6. Assisting Inca representatives with remote diagnosis of Equipment problems.
 - 25.1.7. Notifying Inca promptly of any faults with the Equipment and not operating the Equipment until such fault has been diagnosed by Inca or its authorised representatives.
 - 25.1.8. Allowing only Inca-trained individuals to operate the Equipment.

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26. Access to Equipment

26.1. Time spent by any Inca employee or representative at the Customer's premises where such representative is unable to access the Equipment or where the representative is unable to perform services due to any fault of the Customer will be charged at the Contract-specified rate for standard labour.

27. Customer use of Equipment

27.1. Equipment repairs required as a result of Customer error, negligence or Equipment misuse – including use of unapproved inks or solvents, or refusal to implement changes recommended by Inca - and unwarranted call-outs will be billed at Contract-specified rates for standard labour and call-out charges. Required replacement parts will be invoiced at current list prices.

27.2. Service required on Equipment that has received modifications not recommended or performed by Inca, or has been damaged as a result of being moved from the original location of installation without Inca involvement, or has been damaged due to a failure to provide or maintain appropriate input power, temperature, humidity, electrical grounding or other environmental requirement will be quoted as required.

27.3. Inca is not responsible for Equipment movement, disconnection or reconnection under the standard terms of this Contract, but will quote for such activities.

27.4. Inca is not responsible for the generation, characterisation, management, treatment, storage, disposal or release of any chemicals or hazardous materials from or related to the Equipment resulting from Service Contract services by Inca.

28. Health and Safety

28.1. The Customer is responsible for Health and Safety assessments and practices regarding use and maintenance of the Equipment. It is the responsibility of the Customer to ensure that any service carried out under the Service Contract can be performed in a safe working environment, and existing Health and Safety practices remain valid at all times.

29. Customer Contact

29.1. The Customer must designate two individuals to serve as the primary and secondary contacts for Equipment support. These individuals must have sufficient authorisation to approve and accept the function of the Equipment at completion of service.

30. Remote Access and Connections

30.1. The Customer must install and maintain a dedicated telephone line and Internet connection to assist with Equipment maintenance. These connections are mandatory under the standard Equipment purchase agreement, and the Customer is responsible for all installation costs.

30.2. Inca reserves the right to connect remotely to the Equipment via an Internet connection without prior notice for the purposes of analysis, data download and diagnostics. This data will be used solely by Inca to assist with Equipment support, and will not be made available to other parties. Inca shall not be liable for any failure to rectify any fault where such remote connection is not made available by the Customer.

31. Replacement Parts

31.1. Equipment components replaced by persons other than Inca representatives or Inca-trained Customer personnel and any faults directly resulting from such component replacement will not be covered by the Inca Parts Warranty (*SR0026 Parts Warranty for New Flatbed Products*).

31.2. Replacement parts supplied by Inca under the terms of this Service Contract can be new, previously repaired or rebuilt. Replacement parts are provided on an exchange basis, and the replaced part shall become the property of Inca. If such replacement parts are considered Consumable in nature or are provided under Service Contracts that are non-parts inclusive, they will be invoiced at current list prices.

31.3. Parts replaced under a non-parts inclusive Service Contract that fail within 30 days of the date of part installation due to a defect in manufacture will be replaced at no extra parts charge to the Customer. The Customer will be responsible for labour and call out charges associated with the parts replacement. If the newly replaced part malfunctions with a like failure within 10 days of the date of replacement, Inca will replace the part at no charge to the Customer.

31.4. Inca warrants that Printheads are free of manufacturing defects and provides a 12 month warranty for premature failure of seals and electronics. Nozzle failure due to contact, contamination or blockage is not covered by warranty. It is the responsibility of the Customer to maintain Printheads and ink filters as defined in the Equipment User Manual and subsequent updates and service bulletins.

32. Support Levels

Service Contract support levels are set out in Inca's service documentation ■