

## Xaar Terms and Conditions of Sale

**"Contract"** means the contract between Xaar and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions;

**"Conditions"** means the terms and conditions of sale set out herein, which may be updated without notice from time to time;

**"Customer"** means the purchaser, as specified in the Order Confirmation, of Goods and/or Services;

**"Goods"** means the goods specified in the Order Confirmation;

**"Jettable Fluid"** means any material capable of being ejected by an inkjet printhead, that has either been approved under the Xaar "Ink Approval Scheme", a list of which is available on the Xaar website at [www.xaar.com](http://www.xaar.com), which may be amended from time to time, or which meet the technical standards, determined by Xaar, as applicable for use in the Printhead;

**"Order Confirmation"** means the written notification issued by Xaar to the Customer indicating acceptance of the Customer's order (and where more than one such notifications are issued, shall mean the last such notification);

**"Product"** means System Components, Goods and/or a Printhead manufactured for or on behalf of Xaar;

**"Printhead"** means an inkjet printhead of the type supplied by or on behalf of Xaar, for use in a printer or similar device, which transmits fluid to a form of media;

**"Services"** means the services (if any) specified in the Order Confirmation or a separate statement of work agreed between the parties;

**"System Components"** means components other than a Product supplied by Xaar to facilitate the use of the Product typically referred to as "Drive Electronics" or "Ink Supply Systems";

**"Terms of Warranty"** means Xaar's published printhead warranty in force from time to time (<https://www.xaar.com/media/1426/xaar-terms-of-warranty.pdf>);

**"Xaar"** means the Xaar company specified in the Order Confirmation for the Goods and/or Services which is issued to the Customer, being XaarJet Limited or Xaar3D Limited of Science Park, Cambridge, England CB4 0XR;

### 1. Product Purchase

- 1.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents including but not limited to any Customer standard terms and conditions of supply and/or purchase.
- 1.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate.
- 1.3 The Order shall only be deemed to be accepted when Xaar issues an Order Confirmation at which point the Contract shall come into existence.

- 1.4 A quotation for the Goods given by Xaar shall not constitute an offer. A quotation shall only be valid for a period of thirty (30) calendar days from its date of issue.
- 1.5 Xaar has developed, produces and sells Goods and the Customer wishes to buy, and Xaar wishes to supply, the Goods on the terms and conditions set out in these Conditions.
- 1.7 The Customer undertakes not to re-sell or otherwise supply Goods purchased from Xaar into the open market. The Goods supplied under these Conditions are for use in printers or for supply as spare parts to printers manufactured by the Customer. The Customer undertakes to ensure that Goods supplied by the Customer to affiliate companies and distributors of the Company's printers as a spare part are only installed in printers manufactured by the Customer.
- 1.8 Except as permitted by law, the Customer shall not (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify or adapt the Products in whole or in part except to the extent that such action is legitimately required for the purposes of integrating the operation of the Products with the operation of the software or systems used by the Customer.
- 1.9 The Customer shall only use Jettable Fluids with the Printheads and shall make best efforts to ensure that its third party customers of products incorporating the Printheads use only Jettable Fluids.

## **2. Price and Payment**

- 2.1 The price payable by the Customer under these Conditions shall be as stated in the Order Confirmation or if no price is stated as calculated according to Xaar's relevant price list in force as at the date of the Order Confirmation.
- 2.2 Xaar may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - 2.2.1 any factor beyond Xaar's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 2.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification; or
  - 2.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Xaar adequate or accurate information or instructions.
- 2.3 Xaar shall invoice the Customer for the whole or any instalment of Goods and/or provision of Services on or after delivery of such Goods or part thereof and/or provision of such Services or part thereof (as the case may be).
- 2.4 The Customer shall pay Xaar the amount due under the invoice in accordance with the payment terms set out in the Order Confirmation. Xaar's standard terms of payment are payment in advance, or as otherwise agreed between the parties. Payment shall be in pound sterling, unless otherwise stated in the Order Confirmation.
- 2.5 Xaar reserves the right to charge interest at a daily rate of the greater of either 4% per annum above the base rate of Bank of England base rate from time to time, or the maximum rate of interest allowable under the Late Payment of Commercial Debts (Interest) Act 1998, on all sums due and outstanding until payment in full is received.
- 2.6 Unless otherwise stated, all payments due to Xaar under these Conditions are exclusive of value added tax (or any equivalent taxes), import or export duties and handling or delivery charges ("Taxes"). The Customer shall be responsible for payments of all Taxes (other than those associated with Xaar's income).

- 2.7 The Customer shall pay all amounts due under these Conditions in full without any set-off, counterclaim, deduction (which includes any Products returned under Xaar's RMA procedure) withholding (except for any deduction or withholding required by law). Xaar shall only be responsible for its own bank charges and the Customer shall pay all required bank charges in relation to the transaction. Xaar may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Xaar to the Customer. Xaar may suspend all Services and/or delivery of subsequent Orders until payment has been made in full.
- 2.8 Where an Order is to be made by instalments, each delivery shall be deemed for such purpose to be the subject of a separate contract and any failure whatsoever by Xaar in respect of any one delivery shall not entitle the Customer to repudiate the contract or any instalments remaining to be delivered thereunder.

### **3. Delivery**

- 3.1 Goods shall be delivered in accordance with the delivery method stated in the Order Confirmation.
- 3.2 Xaar shall use all reasonable endeavours to deliver the Goods and/or provide the Services on the date agreed with the Customer. However late delivery of the whole or any instalment of the Goods or late provision of Services or any part thereof does not entitle the Customer to reject the Goods or Services (as the case may be), terminate these Conditions, or withhold payment of any part of the price payable. Xaar reserves the right to deliver by instalments.
- 3.3 If Xaar fails to deliver the Goods or provide the Services, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Goods or Services of similar description and quality in the cheapest market available, less the price of the Goods or Services.
- 3.4 If delivery of Goods or provision of Services is not possible due to any act, omission or default of the Customer, Xaar may charge the Customer with any reasonable transportation, storage or other costs thereby incurred, or, without prejudice to its other rights and remedies, may terminate these Conditions.
- 3.6 If Xaar's performance of its obligations under these Conditions is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Xaar shall:
- 3.6.1 not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
  - 3.6.2 be entitled to payment of the fees despite any such prevention or delay; and
  - 3.6.3 be entitled to recover any additional costs, charges or losses Xaar sustains or incurs that arise directly or indirectly from such prevention or delay.

### **4. Ownership and Risk**

- 4.1 Risk of any damage to or loss of the Goods shall pass to the Customer in accordance with the relevant Incoterm classification terms stated in the Order Confirmation.
- 4.2 Ownership in the Goods shall not pass to the Customer until the price of the Goods is paid for in full and no other amounts are owed by the Customer in respect of any other Goods or Services provided by Xaar.
- 4.3 Until such time as ownership in the Goods passes:
- 4.3.1 it is the responsibility of the Customer to insure the Goods against all insurable risks to an amount equal to the invoice price (excluding VAT or equivalent taxes) of the Goods;
  - 4.3.2 the Customer shall be entitled to sell the Goods as incorporated into equipment or sold as spares for their own equipment but shall hold the proceeds of sale on trust for Xaar and if so required shall account to Xaar for such proceeds.

4.4 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Product or Goods sold by Xaar containing or incorporating any Goods from the market ("Recall Notice") it shall immediately notify Xaar in writing enclosing a copy of the Recall Notice.

## 5. Engineering Support

5.1. Where Xaar provides Services to the Customer, the Customer shall:

5.1.1. co-operate with Xaar in all matters relating to the Services;

5.1.2. provide, for Xaar, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by Xaar; and

5.1.3. provide, in a timely manner, such information as Xaar may require, and ensure that it is accurate and complete in all material respects.

5.2. In supplying the Services, Xaar shall:

5.2.1. perform the Services with reasonable care and skill;

5.2.2. perform the Services in accordance with the service description set out in the Order Confirmation and/or statement of work provided that Xaar shall not be liable if, as a result of such compliance, it is in breach of any of its obligations under such Order Confirmation; and

5.2.3. observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to Xaar.

## 6. Confidentiality and Intellectual Property Rights

6.1 In cases where Xaar and the Customer have entered into a separate non-disclosure agreement ("**NDA**") the terms of the NDA shall apply in addition to this clause 6. The terms of the NDA will take precedence in the event of any conflict between the NDA and this clause 6.

6.2 Except as permitted by clause 6.3, the Customer undertakes that it shall not at any time disclose to any person, or use for any purpose except to carry out its obligations under these Conditions, any confidential information disclosed to it by Xaar concerning the business or affairs of Xaar or of any member of its Group. Confidential information includes, but is not limited to, information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities future products and plans, commercial and financial information ("**Confidential Information**"), whether provided in oral, written, graphical or machine-readable form or by demonstration to the Customer by Xaar or and which is marked as confidential or the equivalent.

6.3 Customer may disclose Xaar's Confidential Information:

6.3.1 to its employees, officers, agents, consultants or sub-contractors ("**Representatives**") who need to know such information for the purposes of carrying out Customer's obligations under these Conditions, provided that the Customer takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 6. Customer shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and

6.3.2 as may be required by law, court order or any governmental or regulatory authority.

6.4 Xaar reserves all rights in its Confidential Information. No rights or obligations in respect of Xaar Confidential Information other than those expressly stated in these Conditions are granted to the Customer. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by Xaar now or in the future.

- 6.5 The Customer shall not make, or permit any person to make, any public announcement concerning these Conditions, any Order or the provision of Services without the prior written consent of Xaar.
- 6.6 All intellectual property rights (including but not limited to patents, copyright, design rights and trade marks) in, and all inventions, discoveries or improvements relating to, all Goods, Services and any materials or documentation relating thereto shall as between the Customer and Xaar belong to Xaar.
- 6.7 In relation to trade secrets disclosed to the Customer by Xaar (which shall be appropriately marked as "Trade Secret") , the Customer shall comply with the obligations of confidentiality contained in this clause 6 and any relevant provisions of a separate NDA until Xaar has released such trade secret to the public generally.
- 6.8 The provisions of this clause 6 shall remain in force notwithstanding expiry or earlier termination of these Conditions.

## **7. Warranties and Liability**

- 7.1 Xaar's sole warranty obligations shall be as set out in the Terms of Warranty. All other conditions or warranties, express or implied, statutory or otherwise (including without limitation as to quality, performance, merchantability or fitness or suitability for purpose) are excluded to the fullest extent permissible by law.
- 7.2 Unless otherwise agreed, Xaar shall not be liable in respect of any damage caused during or as a result of transportation or carriage of the Goods.
- 7.3 Subject to clause 7.5, and subject to mandatory local laws, Xaar shall not in any circumstances be liable to the Customer whether in contract, tort, breach of statutory duty or otherwise in respect of any loss of profits, revenue, goodwill, business opportunity, data or contracts or for any indirect, special, punitive or consequential loss, damage, costs or expenses whatsoever or howsoever arising out of or in connection with these Conditions AND REGARDLESS OF WHETHER XAAR HAD KNOWLEDGE OF THE POTENTIAL FOR ANY SUCH LOSS.
- 7.4 SUBJECT TO CLAUSE 7.5, XAAR'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE CONDITIONS SHALL BE LIMITED IN AGGREGATE TO THE LESSER OF EITHER £500,000 OR 100% OF THE PRICE PAID FOR THE GOODS OR SERVICES AS DETERMINED IN ACCORDANCE WITH CLAUSE 2.1 HEREOF.
- 7.5 Nothing in these Conditions shall exclude Xaar's liability in respect of death or personal injury caused by its negligence or willful misconduct or in respect of any fraudulent misrepresentation.
- 7.6 The Customer hereby acknowledges that the price of the Goods or Services payable under these Conditions has been negotiated and agreed on the basis that the parties may exclude or limit their liability as set out in these Conditions. The Customer hereby confirms that it will have adequate insurance with a reputable insurance company to cover any liabilities owed to Xaar.

## **8. Termination**

- 8.1 If the Customer fails to pay Xaar in accordance with clause 2.4, without prejudice to any other rights or remedies:
  - 8.1.1 Xaar may terminate these Conditions with immediate effect and recover all Goods for which it holds legal title in accordance with clause 4 and which have not been resold or irrevocably incorporated into products, and may enter or instruct its authorised agents to enter the Customer's premises for this purpose;
  - 8.1.2 Xaar may terminate these Conditions with immediate effect and cease to provide any outstanding Services;
  - 8.1.3 If deliveries are to be made in instalments Xaar may suspend or cancel further deliveries; and

8.1.4 Xaar shall be entitled to revoke any credit facilities and/or to require payment in advance for all future Orders.

8.2 If the Customer enters into a voluntary arrangement with creditors, becomes insolvent or bankrupt, has a petition presented for its winding up, passes a resolution for voluntary winding-up, becomes the subject of an administration order or has a receiver appointed, Xaar may treat these Conditions as having terminated and suspend any further deliveries, and all monies then owing shall immediately become due regardless of any previous agreement to the contrary.

8.3 These Conditions may, on reasonable written notice of Xaar, be terminated in the event of circumstances outside the reasonable control of Xaar, and Xaar shall not incur any liability thereby for failure to manufacture or deliver the Goods or provide the Services. Such circumstances include (without limitation) war, terrorism, riot, explosion, collapse of buildings, acts of Gods, lightning, fire, flood, natural disaster, shortage of raw materials, non-performance of suppliers, strike interruption or failure of utility service.

## **9. Compliance**

9.1 The Customer warrants that it shall comply with all applicable:

9.1.1 laws relating to anti-bribery and corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977; and

9.1.2 economic and trade sanctions laws, regulations and rules, including those promulgated by the Office of Foreign Asset Control of the U.S. Department of the Treasury and by HM Treasury in the United Kingdom.

9.2 Xaar may suspend or terminate these Conditions if it has reason to believe that the Customer is breaching or failing to comply with the provisions of this clause 9.

## **10 General**

10.1 In the event that Xaar intends to discontinue the supply of Goods, Xaar shall provide the Customer with a written notification as per its End of Life Policy (<http://www.xaar.com/en/MediaDocuments/End-of-Life-Policy-Statement.pdf>).

10.2 These Conditions, the NDA (if any), the Order Confirmation, the End of Life Policy, and the Terms of Warranty (and the documents referenced therein) shall together comprise the entire contract between the parties, ("the Agreement") and shall together prevail over any terms which the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any conflict of terms under the Agreement, the order of precedence shall be as follows: (i) Order Confirmation; (ii) Conditions; (iii) Terms of Warranty, (iv) End of Life Policy.

10.3 This Contract constitutes the entire agreement between the parties in respect of the subject matter thereof and supersedes and replaces all prior agreements and discussions between the parties relating to it. The Customer confirms and acknowledges that it has not been induced to enter into the Contract by any representation, warranty or undertaking not expressly incorporated into it. However, nothing in this Contract purports to exclude liability for any fraudulent statement or act.

10.4 No variation of these Conditions shall be valid unless in writing and signed by an authorised representative of Xaar and an authorised representative of the Customer.

10.5 The Customer shall not without Xaar's prior written consent assign, transfer, charge, sub-contract or otherwise deal with any of its rights or obligations under the Agreement. Xaar may assign or sub-contract any part of the Agreement.

- 10.6 If any term of these Conditions is held by the Court to be unlawful and struck out, the validity and enforceability of the remainder these Conditions shall not be affected.
- 10.7 Any notice to be given under these Conditions shall be in writing (and in the case of Xaar marked for the attention of the IP and Legal Director) and shall be delivered by hand, sent by next day courier (such notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in these Conditions or the Order Confirmation or as otherwise notified. Any such notice shall be deemed to be served: if delivered by hand or by courier - at the time of delivery.
- 10.8 Xaar is a component producer selling exclusively Business to Business. Under Article 9 of WEEE Directive 2002/96/EC when purchasing components, systems or sub-assemblies from Xaar the Customer contracts to dispose of all Goods at their own expense and liability.
- 10.9 The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Conditions and nothing therein shall confer or purport to confer on any third party any benefit or right to enforce any term of these Conditions.
- 10.10 The parties hereto are independent contractors, and these Conditions do not constitute a joint venture nor do they make any party the agent or legal representative of the other party for any purposes whatsoever, and neither party shall have any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other party or to bind the other party in any manner.
- 10.11 These Conditions shall be governed by the laws of England without regard to the U.N. Convention on the International Sale of Goods. The parties irrevocably agree to submit to the exclusive jurisdiction of the English courts.