



## OPERATIONAL SYSTEMS

### Terms of Trade

**Reference: OS2620A**

#### Conditions of Sale

**Issue Date: 15<sup>th</sup> May 2018**

#### 1. Definitions

In these Conditions:

- **'Conditions'** means these Conditions of Sale
- **'Contract'** means the contract for sale of Goods between the Seller and the Customer incorporating these Conditions
- **'Customer'** means the person, firm or company buying Goods from the Seller
- **'Goods'** means the items (and services) being supplied to the Customer by the Seller
- **'Seller'** means Oat Services Ltd, 226 Bassett Avenue, Southampton, Hampshire SO16 7FU, UK

#### 2. Formation of Contract

- 2.1 These Conditions are the only terms and conditions on which the Seller contracts for the supply of Goods and they are incorporated in all Contracts entered into by the Seller.
- 2.2 These Conditions may only be varied in writing signed by a duly authorised representative of the Seller.

#### 3. Prices

- 3.1 Unless otherwise stated in the Contract, the prices payable for Goods shall be the relevant price in the Seller's published price list current at the date of delivery of the Goods.
- 3.2 Where the Seller's quotation contains prices which are different from the published price list and the Contract is made within the period for acceptance stated in the Seller's quotation (or if none, within 30 days from the date of the quotation), then the prices shown in the quotation shall be the prices payable for the Goods.
- 3.3 Unless otherwise stated in the Contract, prices are quoted exclusive of value added tax (or other goods and services tax).
- 3.4 The prices in the Seller's published price lists include packaging, carriage and freight unless stated to the contrary.

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##### 4. Delivery

- 4.1 All delivery dates given by the Seller are given in good faith but the Seller will not have any liability to the Customer for any delay in delivery.
- 4.2 The Seller will notify the Customer when the Goods are ready for delivery, and the Seller will dispatch the goods within three working days, unless different delivery arrangements are agreed in the Contract.
- 4.3 If the Customer fails to accept delivery of the Goods within 7 days from being notified that these are ready for delivery, the Seller reserves the right to charge for storage from the end of that period until the Goods are delivered.
- 4.4 The Customer will be responsible for providing the facilities and labour necessary for unloading the Goods if the Seller has agreed to deliver to the Customer's premises.
- 4.5 The Customer will be responsible for inspecting Goods upon delivery and it is a condition of the Contract that any shortage or defect in Goods at delivery are notified to the Seller in writing within 3 working days from the delivery date.

##### 5. Payment

- 5.1 Unless otherwise agreed, the Seller will submit an invoice for the Goods upon delivery and payment (except when clause 5.4 applies) will be due 28 days from the delivery date.
- 5.2 The Seller reserves the right to charge interest on any overdue payment at the rate of 4% per annum above the Base Rate of Barclays Bank Plc for the time being in effect, calculated in a daily basis on the outstanding balance from the due date until the date that payment is credited to the Seller's bank account.
- 5.3 Notwithstanding clause 5.2, the Seller, without affecting any other remedy which it may have, will be entitled to cancel the Contract and/or suspend any further deliveries of Goods if any payment is not made on the due date by the Customer.
- 5.4 Payment for all Goods shall be in sterling unless agreed on the contract.

##### 6. Property and Risk

- 6.1 The risk of loss or damage to the Goods passes to the Customer upon delivery or 7 days after the Seller has notified the Customer that the Goods are ready for collection at its premises if the Customer has failed to collect them.

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- 6.2 Ownership in the Goods will remain with the Seller until payment in full of all amounts due to it from the Customer have been received by the Seller.
- 6.3 Until ownership passes to the Customer, the relationship between the Seller and the Customer will be that of bailor and bailee and the Customer will be responsible for the safe custody and insurance of the Goods.
- 6.4 Until ownership passes, the Customer, having taken delivery, will keep the Goods identified as the property of the Seller and the Seller will be entitled to enter premises where the Goods are stored and recover them.
- 6.5 No re-sale of the Goods by the Customer shall take place until payment is made in full to the Seller, nor will the Customer be entitled to incorporate any of the Goods in other materials or products without the prior written consent of the Seller.

#### 7. Storage and Installation

- 7.1 All Goods will be stored in accordance with the instructions issued by the Seller which accompany the Goods.
- 7.2 The Seller will have no liability to the Customer or any third party if the Customer does not comply in all respects with the Seller's instructions or if the Goods are used in abnormal or unusual circumstances.
- 7.3 If the Customer requests advice from the Seller with respect to use, the Seller will have no liability for a recommendation unless it is in writing and signed by a duly authorised officer of the Seller and is given in response to a written request from the Customer.

#### 8. Guarantees and Liability

- 8.1 The Seller warrants that all Goods will comply with their specification at the time of delivery.
- 8.2 If the Customer notifies the Seller immediately it becomes aware of any defect in the Goods which appears within 1 months of delivery, the Seller will, at its option, either repair or replace any Goods found to be defective due to faulty manufacture or materials supplied by the Seller.
- 8.3 Where a defect has been notified, the Customer will, if so requested by the Seller, return the Goods to the Seller at the Customer's expense. If the Seller subsequently confirms that the returned Goods contain defects attributable to the Seller, the reasonable costs of re-delivery incurred by the Customer will be refunded.
- 8.4 The warranties given above will not apply to defects which are due to:
  - 8.4.1 fair wear and tear, accidental damage or failure by the Customer to adhere to the Seller's instructions or written recommendations;

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- 8.4.2 materials or equipment included in the Goods which have not been manufactured by the Seller.
- 8.5 All terms, conditions and warranties implied by law, trade use or otherwise (including but not limited to any warranties as to quality or fitness for purpose) are excluded to the extent permitted by law. The Customer, by entering into the Contract, acknowledges that the only warranties are those given expressly by the Seller in these Conditions.
- 8.6 Under no circumstances will the Seller have any liability to the Customer for any loss or damage (whether direct, indirect or consequential and whether in contract or in tort) except as expressly stated in these Conditions. The Seller retains legal liability for any death or personal injury due to the negligence of the Seller.

#### **9. Force Majeure**

The Seller will not have any liability to the Customer if it is prevented from performing the Contract on account of force majeure which includes, but is not limited to, extreme weather conditions, act of God, war, terrorism, strikes or difficulty in obtaining materials and labour. In any of these circumstances, the Seller reserves the right to cancel the Contract.

#### **10. Intellectual Property**

The Seller will take all necessary steps to protect the Customer against any claims that the Goods infringe any intellectual property rights of a third party. The Customer will promptly notify the Seller of any such claim and will fully co-operate with the Seller and permit the Seller to conduct the defence of any proceedings. Under no circumstances will the Customer settle any such claim without the previous written consent of the Seller.

#### **11. Notices**

Any notice to be given by either party to the other shall be in writing and sent by first class post, email, facsimile transmission or delivered by hand. Notice sent by post shall be treated as delivered after two working days. Notice delivered by hand or by email, facsimile will be treated as delivered on the day of delivery unless this occurs outside normal working hours, in which case delivery will be effective on the next working day.

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#### **12. Assignment and Sub-Contracting**

- 12.1 Neither party will assign any of its interests in the Contract without the prior written consent of the other.
- 12.2 The Seller may, at any time, sub-contract all or part of its obligations with respect of the manufacture and delivery of Goods.

#### **13. Customer Default**

If the Customer:

- a) Commits a breach of contract, or
- b) Fails to make a payment on the due date; or
- c) Becomes insolvent or has a receiver appointed

then, in any such case the Seller shall be entitled either to suspend the supply of Goods or, at its option, to cancel the Contract and repossess any Goods for which payment has not been received in full. The Seller shall also have this right if it reasonably considers that any of the events mentioned (a), (b) or (c) above are likely to occur.

#### **14. Severance**

If any provision of these Conditions is held by a court to be unenforceable, the remaining provisions of the Contract will continue in effect.

#### **15. Governing Law**

The Contract shall be governed by the laws of England.

#### **16. Disputes**

Any dispute between the parties shall be finally determined by the courts of England and Wales and the parties agree to submit to the jurisdiction of those courts.

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