



OPERATIONAL SYSTEMS

Conditions of Sale

Reference: OS2650A

1 INTERPRETATION

In these conditions the following definitions and rules of interpretation shall apply:

- 1.1 "Buyer" means the person, firm or company who buys the Goods from the Company;
- 1.2 "Contract" means any contract between the Company and the Buyer for the sale and purchase of Goods, incorporating these Conditions;
- 1.3 "Goods" means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
- 1.4 "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
- 1.5 Any reference to a statute or statutory provisions is a reference to it as amended or re-enacted or extended at the relevant time;
- 1.6 Any reference to a clause (unless otherwise stipulated) is reference to a clause of these Conditions;
- 1.7 A reference to one gender includes a reference to the other gender;
- 1.8 A reference to the singular includes the plural and vice versa;
- 1.9 Clause headings are for convenience only and shall not affect the interpretation of these Conditions.

2 BASIS OF SALE

- 2.1 Subject to any variation under clause 2.4, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply).
- 2.2 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acceptance of order (an "Order Acceptance") to the Buyer. Any quotation is valid for a period of 30 days provided the Company has not previously withdrawn it.

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- 2.3 The Company will be under no liability for any order received until the Order Acceptance is delivered to the Buyer or (if earlier) the Company delivers the Goods to the Buyer at which time a Contract will be formed.
- 2.4 These Conditions apply to all of the Company's sales and may only be varied with the Company's written consent.
- 2.5 Any advice, recommendation or representations about the Goods given by the Company or its employees or agents shall have no effect unless expressly agreed in writing to form part of the Contract and signed by a director of the Company. Save in the case of fraudulent misrepresentation, the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 If there is any conflict between any term set out in the Order Acceptance and these Conditions, the term in the Order Acceptance shall apply.

3 DESCRIPTION AND SPECIFICATIONS

- 3.1 The quantity, quality and description of the Goods shall be set out in the Order Acceptance. The Company reserves the right to make any changes to the specification referred to in the Contract which are required to conform with any applicable statutory or regulatory requirements or which do not materially affect the quality or performance of the Goods.
- 3.2 All samples, specifications, drawings, descriptions, photographs, measurements or capacities issued by the Company which are not in the Order Acceptance are approximate only and given for illustrative purposes and shall not form part of the Contract. No Contract shall be a sale by sample.

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- 3.3 If Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim of infringement of any patent, copyright, registered design, design right, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.

4 PRICE

- 4.1 The price of the Goods shall be as stated in the Order Acceptance ("Price") and, unless otherwise stated in the Order Acceptance, shall be exclusive of:
- 4.1.1 sales taxes or valued added tax;
 - 4.1.2 insurance;
 - 4.1.3 the cost of unloading, carriage and installation; and
 - 4.1.4 any special packing or alterations to the Goods required by the Buyer and agreed to by the Company;
- all of which amounts the Buyer will pay in addition to the Price when it is due to pay for the Goods.
- 4.2 The Company reserves the right, to invoice the Buyer for Goods delivered in instalments after such instalment has been delivered, and the provisions of these Conditions shall apply in full to such invoices as if such instalment was a separate Contract.

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5 PAYMENT

- 5.1 Payment of the Price shall be made in the nominated currency within 28 days of the date of the Company's invoice. The Buyer shall make no deduction of any type from such payment unless it has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 5.2 If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment then the Buyer shall be liable to pay interest (compounded monthly) on any amounts outstanding (both before and after judgment) at the rate of 4 per cent above the Barclays Bank Plc base rate for the time being in force, accruing on a daily basis until payment is made.
- 5.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 5.4 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.

6 DELIVERY

- 6.1 Delivery of the Goods shall take place by the Buyer collecting the Goods from the Company's place of business within 5 days of the Company giving it notice that the Goods are ready for delivery, or if some other place for delivery is agreed by the Company in writing, by the Company delivering the Goods to that place ("Delivery Point")
- 6.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be of the essence unless previously agreed in writing by the Company. If no dates are so specified, delivery will be within a reasonable time. The Goods may be delivered early by the Company.

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- 6.3 Subject to the other provisions of these Conditions, the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation pure economic loss, loss of profits, loss of business, depletion of goodwill and similar losses), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 6.4 If for any reason the Buyer will not 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 Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 6.4.1 the risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - 6.4.2 the Goods will be deemed to have been delivered; and
 - 6.4.3 the Company may store the Goods until delivery in which case the Buyer will be liable for all related costs and expenses (including without limitation, storage and insurance).
- 6.5 The Buyer will provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 6.6 The Company shall not be liable for any non-delivery of Goods unless written notice is given to the Company within 5 days of the date when the Goods would in the ordinary course of events have been received.
- 6.7 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 Price rate against any invoice raised for such Goods.

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7 RISK AND TITLE

- 7.1 The Goods are at the risk of the Buyer from the time of delivery.
- 7.2 Title to the Goods shall not pass to the Buyer until the Company has received payment in full (in cash or cleared funds) for:
 - 7.2.1 the Goods; and
 - 7.2.2 any other goods or services that the Company has supplied to the Buyer in respect of which payment has become due.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
 - 7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
 - 7.3.5 hold the proceeds of the insurance referred to in clause 7.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

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- 7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Company on behalf of the Company and the Buyer shall account to the Company accordingly; and
 - 7.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 7.5.1 the Buyer 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 Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

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

7.5.3 the Buyer encumbers or in any way charges any of the Goods.

7.6 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.

7.7 The Buyer grants the Company, 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 Buyer's right to possession has terminated, to recover them.

7.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this clause 7 shall remain in effect.

8 INCOTERMS

8.1 In the event that an Incoterm shall apply to this Contract the Company shall confirm this in writing stating the applicable Incoterm in its Order Acceptance or such other pre-contractual document;

8.2 Such Incoterm shall be incorporated into and form part of this Contract and in the event of any conflict between such Incoterm and the rest of the terms of this Contract, the Incoterm shall prevail.

9 WARRANTY

9.1 The Company warrants that on delivery, the Goods shall:

9.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

9.1.2 be reasonably fit for any purpose held out by the Company

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- 9.1.3 conform in all material respects with their description; and
 - 9.1.4 be free from material defects in design, material and workmanship
- providing written notification of any defect is given promptly to the Company after its discovery.
- 9.2 In respect of Goods not manufactured by the Company, the Company shall endeavour to assign for the benefit of the Buyer such rights (including guarantee or warranty rights) as the Company has against such manufacturer but shall not be liable for such Goods beyond this clause 9.2.
- 9.3 The Company reserves the right to require that all faulty Goods be returned to the Company. In that event the Company shall refund the cost of carriage by normal means on returned Goods and the repaired or replacement Goods will be delivered free of charge by the Company to the location of the faulty Goods. Where Goods are repaired or replaced under this clause they will be considered as having been delivered at the same time as the original Goods.
- 9.4 The Company shall not be liable for a breach of any of the warranties in this clause 9 if:
- 9.4.1 the Buyer makes any further use of such Goods after giving notice of such defects; or
 - 9.4.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use of the Goods, or, if there are none, good trade practices; or
 - 9.4.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.5 The Company's sole obligation under this clause 8 shall be at its option to repair or replace the Goods or any part thereof or refund the price of such Goods at the pro rata Price. The Company's liability under this clause 8 shall be in lieu of any warranty or condition express or implied, whether by statute or otherwise, including, but without limitation, any implied warranties as to satisfactory quality or fitness for purpose.

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10 LIMITATION OF LIABILITY

- 10.1 Subject to clause 9, the following provisions set out the entire financial liability of the Company (including any liability of the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Conditions and any representation, statement or tortuous act or omission, including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company:
- 10.3.1 for death or personal injury caused by the Company's negligence; or
 - 10.3.2 for fraud or fraudulent misrepresentation; or
 - 10.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 10.4 AND 10.5.

- 10.4 Subject to clauses 10.2 and 10.3:
- 10.4.1 the Company's total liability in contract, tort (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
 - 10.4.2 the Company shall not be liable to the Buyer for loss of profit, loss of business, depletion of goodwill (in each case whether direct, indirect or consequential and whether or not foreseeable) or any indirect or consequential loss or damage, costs, expenses or any other

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10.4.3 claims for consequential compensation whatsoever which arise out of or in connection with the Contract.

10.5 If due to the Buyer's particular circumstances the limitation in clause 10.4 is unacceptable to the Buyer then the Buyer shall notify such circumstances to the Company who may then accept an extended liability to a level agreed in writing prior to the Contract being entered into, upon payment of the cost of a single insurance premium (if such an insurance policy is available).

11 MEDIATION

If any dispute arises in connection with this Contract, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start no later than 14 days after the date of the ADR Notice. No party may commence any court proceedings in relation to any dispute arising out of this Contract until it has attempted to settle the dispute by mediation and either mediation has terminated or the other party failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

12 EVENTS BEYOND THE COMPANY'S CONTROL

12.1 The Company shall be under no liability for any delay or failure to perform in the event that the manufacture, supply or delivery of the Goods is prevented or delayed by any act or circumstances beyond the Company's reasonable control including but not limited to an act of God, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure materials required for its performance of the Contract.

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- 12.2 The Company shall notify the Buyer of any circumstance arising under clause 12.1 and if such circumstance prevails for more than 3 months then either party shall have the option by giving notice in writing to the other to bring the Contract to an end.

13 NOTICES

- 13.1 All communications between the parties shall be in writing and may be delivered by hand, first class post or by fax at the relevant address set out in the Order Acceptance.
- 13.2 All such communications (in the absence of proof of earlier receipt) shall be deemed to be received:
- 13.2.1 if sent by post, 2 days (excluding Saturdays, Sundays and bank holidays in England) after posting (exclusive of the date of posting)
 - 13.2.2 if delivered by hand, on the day of delivery; and
 - 13.2.3 if sent by fax, on a working day prior to 4pm, at the time of transmission and otherwise on the next working day.

14 GENERAL

- 14.1 Any indulgence granted by the Company to the Buyer and any failure by the Company to insist upon strict performance of these Conditions shall not be deemed a waiver of any of the Company's rights or remedies nor be deemed a waiver of any subsequent default by the Buyer.
- 14.2 The invalidity, illegality or unreasonableness in whole or in part of any of these Conditions shall not affect the validity of the remainder of such Condition or these Conditions.
- 14.3 No Contract is assignable by the Buyer without the written consent of the Company and each Contract is between the Company and the Buyer as principals but the Company may without consent assign or sub-contract all or any of its rights and obligations under a Contract.

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15 GOVERNING LAW

The interpretation and application of every Contract shall be in accordance with English Law and both parties agree to submit to the exclusive jurisdiction of the English Courts.

16 THIRD PARTIES

The parties to this Contract do not intend that any provisions of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

Date	Revision Number	Notes
11/06/14	1	Document Creation
15/05/18	2	Reviewed and updated

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