

# Conditions of Sale

A quotation issued by Silicon Bay Limited (the "company") does not constitute an offer. Any order placed by a customer will be accepted by the company only upon the terms and conditions (the "conditions") set out below. No conditions or warranties shall be implied by trade usage and no addition to, variation of or substitution for the conditions sought to be imposed by the customer in any contract arising out of a quotation shall be binding unless expressly accepted in writing by a director on behalf of the company.

A quotation issued by the company is valid for thirty (30) days from the date of issue unless otherwise explicitly stated on the quotation or previously withdrawn and thereafter is subject to written confirmation by the company.

## 1. Parties

The parties to this contract are Silicon Bay Limited ("the seller") and the customer named on the quotation ("the buyer"). This contract is not assignable by the buyer without written consent of the seller.

## 2. Contract Exclusively Subject to These Conditions

- These conditions supersede any other conditions previously issued.
- This contract contains the entire bargain between the seller and the buyer and, in the case of any inconsistency between these terms and the terms of any other contract document sent by the buyer to the seller (whatever their respective dates) in respect of the goods, these terms shall prevail.
- Buyer's standard conditions of purchase shall not apply unless specifically accepted in advance and in writing by a director of the seller.

## 3. Variation of Terms

These conditions may not be varied except by the written consent of a director of the seller

## 4. Price

- The price of the goods ("the price") shall be that specified in the contract.
- Where applicable Value Added Tax will be applied in accordance with United Kingdom legislation at the tax point date.
- The seller reserves the right by notice given at any time before delivery to vary the price if, after the date of contract, there is an increase in the total cost of the goods to the seller owing to wars, Queen's enemies, defence measures, imposition of new customers, excise or other duties or taxes, increase in the costs of raw materials or labour, scarcity of labour or any other cause whatsoever.
- If any variation to the price under condition 4(c) shall increase the price by more than 10 per cent over the price ruling at the date of the contract, the buyer may cancel the contract or any undelivered balance of the contract by written notice to the seller, served within three (3) days of receipt of the seller's notice under condition 4(c).
- In the event that the buyer fails to take delivery of any part of the goods, the seller shall be entitled, by giving notice to the buyer, to increase the price of the goods remaining undelivered to the seller's standard price or the price ruling on the actual date of delivery.

## 5. Payment

- Payment terms are as specified in the contract.
- If any payment is not made on or before the due date, the seller reserves the right to charge interest at three (3) per cent per annum above the base lending rate of HSBC Bank PLC. Such interest shall run from day to day and shall accrue after as well as before any judgement and shall be compounded monthly on the amounts overdue until payment thereof.

## 6. Delivery of Goods

- Delivery date(s) means the date(s) upon which the goods are ready for dispatch to the point of delivery specified by the buyer.
- Unless otherwise agreed in writing, any period for delivery shall be calculated from the date of the seller's acceptance of the order. The seller will make every effort to observe the delivery requirements but any stipulated dates or requirements for delivery are estimates only.
- The seller will notify the buyer when the goods are ready for dispatch. In the event that the buyer does not give delivery instructions to the seller or refuses to accept delivery then the seller shall be entitled to receive payment for the goods as though delivery had taken place.
- If the contract provides for the goods to pass prescribed performance tests then the seller will give seven (7) days written notice to the buyer of the readiness of the goods to undergo such tests. In the event of failure by the buyer to give written notice to the seller to appoint a date within seven (7) days of the date of the seller's notice for such tests to be performed then the seller reserves the right to perform such tests in the absence of the buyer and, if they are successful, to deliver the goods in accordance with the contract.
- The seller shall not be liable for any loss or damage whether arising directly or indirectly from delay in delivery.
- Each delivery of a quantity of goods under this contract shall be deemed to constitute a separate contract to which the terms and conditions hereof apply.
- The seller will endeavour to deliver the correct quantities of goods ordered, but this is dependent on stocks being available and the seller shall not be liable for short delivery, and the buyer shall only be obliged to pay for the actual quantities of goods delivered.
- Should expedited delivery be agreed and necessitate overtime or additional costs, such costs and overtime expenses are to be borne by the buyer.

## 7. Risk

The risk in the goods shall pass to the buyer upon delivery of the goods to the buyer.

## 8. Carriage of Goods

Carriage will be chargeable on all sales at cost.

## 9. Damage or Loss in Transit

The seller will repair or replace, free of charge, goods lost or damaged in transit where delivery has been made by the seller's carrier, provided that the buyer shall give to the seller written notification of such loss or damage within ten (10) days of receipt of the seller's invoice.

## 10. Maintenance and Consumables

- The buyer undertakes to enter into an agreement with the seller in the seller's standard form for the maintenance of the goods and not to permit the goods to be maintained, serviced or repaired other than by the seller of his agent.
- If the goods require to be used in conjunction with consumable items (other than electricity, gas or water) then the buyer undertakes not to use any consumable items other than those supplied by the seller.

## 11. Warranties

- The goods are warranted to comply with the performance specification issued by the seller in respect of such goods or if there is not such specification to be of normal commercial quality or the quality which is otherwise customary for the type of goods concerned.
- Where the buyer has specified that the goods are to be of certain design specification, such specification shall be subject to reasonable commercial variation.
- Where any goods are shown to the reasonable satisfaction of the seller to be defective by reason of faulty design, materials or workmanship within a period of twelve (12) months from their delivery then the seller shall at its sole option either deliver

replacement goods free of charge or rectify such defect free of charge or refund the price of the goods to the buyer.

- The seller shall not be liable for breach of any of the terms implied by the Supply of Goods and Services Act 1982 relating to quality, fitness for purpose, or for any defects in the goods arising from faulty materials or manufacture unless the buyer notifies the seller in writing within thirty (30) days of receipt of the goods of such defects. The seller shall not be liable in respect of any goods which have been altered in any way, not used in a proper manner, not maintained or repaired by the seller or used in conjunction with consumables not supplied by the seller.

## 12. Limitation of Liabilities

- The seller shall not be liable for any loss of or damage to the goods or loss of or damage to commercial or industrial property caused by the goods, however caused or arising, unless the buyer notifies the seller in writing, in the case of loss of or damage to the goods within fourteen (14) days of receipt of the goods, and in the case of loss of or damage to commercial property within fourteen (14) days of the occurrence of such loss or damage.
- Under any circumstances whatsoever, the seller's liability where proven shall not exceed the amount equal to the depreciated value of the goods, based upon a three (3) year straight line amortisation schedule.
- The seller shall not be liable for any indirect or consequential loss however caused.
- Nothing in these conditions shall exclude the liability of the seller in respect of death or personal injury resulting from negligence of the seller, its employees or agents nor exclude the respective rights and remedies of the buyer and the seller under the Unfair Contract Terms Act 1977.

## 13. Retention of Title

For goods not covered by software license (clause 24):

- Notwithstanding delivery, the property in the goods shall remain in the seller until the buyer has paid in full therefor, and the buyer shall keep the goods separate and hold the goods and any proceeds of sale of the goods and any rights arising from such sale thereof as trustee for the seller.
- If any of the goods are processed in other goods before payment in full for the goods has been received by the seller, the goods, including all other goods as aforesaid, shall be the property of the seller, and the buyer shall hold such goods and any proceeds of sale of such goods and any rights arising from such sale as trustee for the seller until such payment is made.

## 14. Termination

- If the buyer is in breach of any of these conditions, or if in the opinion of the seller the financial responsibility of the buyer becomes impaired or unsatisfactory, the seller may, without prejudice to its other rights and remedies, terminate the contract.
- The seller's right under (a) above shall be exercised by giving written notice to the buyer. On receipt of such notice by the buyer, this contract shall terminate and the seller shall be relieved of all obligations and liability under the contract.
- If the buyer, acting as a business, purports to cancel the contract before delivery is made, or refuses to accept delivery of the goods, the buyer shall be liable for the full contract price, but credit shall be given for the amount obtained by the seller in disposing of the goods.

## 15. Force Majeure

The contract is subject to cancellation by the seller, or to such variation as the seller may find necessary by reason of inability to secure labour, materials, transport or supplies or by reason of strike, lock-out, trade dispute, weather conditions, hostilities, legislation, Act of God, or any cause whatsoever beyond the control of the seller.

## 16. Licences

The buyer shall be responsible for obtaining all necessary licences which may be required in order to import and use the goods, and for all necessary exchange control consents required in order to pay for the goods.

## 17. Designs

The buyer acknowledges the seller's ownership of designs applied to goods and the seller's copyright in such designs whether registered or not. Except where the seller agrees to confine a design to the buyer's goods exclusively, the seller reserves the right to apply the same design to goods sold to other customers.

## 18. Notices

Any notice to be given under this contract to the buyer may be deemed delivered if dispatched by the seller by pre-paid post and sent to the latest address of the buyer as quoted on the order form or in the buyer's correspondence. Anything dispatched by post shall be deemed to have been received when it should in the normal course of post certified by the Post Office have been delivered.

## 19. Indemnities

Where goods are manufactured or processed in accordance with instructions, descriptions or other specifications submitted by the buyer, the buyer shall indemnify the seller against all damages, penalties, costs or expenses arising out of any infringement of any patent design, trademark or other rights of a third party.

## 20. Construction

- Clause headings are for ease of reference only and do not affect construction.
- If any part of this Agreement shall be held to be void or unenforceable such part will be treated as severable leaving valid the remainder of this Agreement notwithstanding the part or parts found to be void or unenforceable.

## 21. Jurisdiction

The contract shall be governed by and construed in accordance with English law and both parties accept the jurisdiction of the English courts.

## 22. Arbitration

All question disputes or differences which may at any time arise between the parties to this contract in respect of any matter or thing arising out of or in relation to the contract, including the subject-matter or construction thereof, shall at the request of either party be referred to the Institute of Arbitrators, or to a single arbitrator to be selected by the President of the Law Society.

## 23. Waiver

Any delay, waiver or omission by either party to exercise any right or power arising from any breach or default by the other party in any of the provisions of this Agreement shall not be construed to be a waiver by the first party of any subsequent breach or default of the same or other provisions on the part of the other party. No waiver shall be valid or binding unless it is in writing and signed by the party making the waiver.

## 24. Software

Software is granted for use on a non-exclusive, non-transferable license basis to the Buyer under the terms of the contract under the following conditions:

- You may install and use a copy of the Software on a single computer only unless otherwise specified in the contract.
- You may make one backup copy of the Software, provided your backup copy is not installed or used on any computer. You may not transfer the rights to a backup copy.
- You may not alter or modify the Software or create any derivative work from such.