

Definition

- 1.1 In these Conditions "the seller" means Abacus Technologies Ltd whose registered office is 1 Percy Business Park, Rounds Green Road, Oldbury, West Midlands, B69 2RD; "the Buyer" means the person, firm or company whose order is accepted by the seller; "the Contract" means each contract between the Seller and the Buyer for sale, supply or manufacture of goods or provision of a service formed by the Sellers acceptance (which however made or communicate shall be deemed subject to these conditions of the Buyers order and shall include any renewal of variation of the same; "the Goods" shall mean the goods and/or services agreed to be sold or supplied by the Buyer.
- 1.2 The Seller only sells or supplies goods on these Conditions which shall be deemed incorporated into the Contract. In the case of a conflict these **Conditions shall override any terms and conditions** the buyer tries to impose in any document forwarded to the Seller or otherwise. The placing of an order for or acceptance of the Goods shall indicate an unqualified acceptance of these Conditions.

Order and Specifications

- 2.1 All orders are accepted subject to the necessary materials or products being available. In circumstances where the necessary materials or products are unavailable the Seller will as soon as practical give notice to the Buyer. On giving such notice the Seller shall repay the Buyer any sums paid in respect of the price of goods that the Seller is unable to supply but shall not be liable for any loss or damage whatsoever arising from the Seller's inability to supply.
- 2.2 The Buyer shall be solely responsible to the Seller for ensuring the accuracy of the terms or specification of any order or any drawings, recommendations or advice submitted by the Buyer and for giving the Seller any information in time to enable the Seller to perform the Contract in accordance with its terms.
- 2.3 If the Goods are to be manufactured, service provided or a process applied by the Seller in accordance with the Buyer's specification, instruction or design the Buyer shall indemnify the Seller against any loss, damage, costs or expenses incurred by the Seller in connection with such manufacture or applied process including any claim for breach of any intellectual property right.
- 2.4 The quality, quantity, description and specification for the Goods shall be those set out in the Seller's quotation (if applicable) or the Buyer's order and accepted by the relevant party.
- 2.5 No order accepted by the Seller can be cancelled by the Buyer except by agreement in writing of the Seller. The Buyer shall indemnify the Seller in full against all loss, costs, damages, charges and expenses incurred by the Seller as a result of such cancellation save where the cancellation is as a result of any unreasonable delay by the Seller which the Seller has acknowledged.
- 2.6 The Buyer should satisfy themselves that the Goods will be fit for the particular purpose for which they are required or of the particular quality required. No term warranty or condition to the effect that goods are fit for any particular purpose or of a particular quality shall be implied into the Contract.

Price of Goods and Delivery

- 3.1 The price of the goods shall be the Seller's price applicable at the date of order or as quoted. The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost of the Seller of providing them.
- 3.2 Prices shall be (unless otherwise stated) quoted in pounds sterling and exclusive of VAT and other applicable taxes or duties. In the case of orders within England, Wales and Scottish mainland (excluding the Highlands):
 - 3.2.1 less than £350 the Buyer shall be obliged to pay the cost of the transport, packaging and insurances in the amount notified by the Seller to the Buyer in its invoice.
 - 3.2.2 exceeding more than £350 of normal stock (excluding delivery by special means and any items specifically notified by the Seller to the Buyer as excluded) shall be free of charge to the Buyer for transport, packaging and insurance.
- 3.3 In the case of orders of any value which are to be delivered outside of England, Wales or Scottish mainland (excluding the Highlands) the Buyer shall be obliged to pay the costs of transport, packaging and insurance in the amount notified by the Seller to the Buyer in the invoice or otherwise.
- 3.4 Orders for non-stock goods are charged for transport, packaging and insurance irrespective of value or delivery address.

Terms of Payment

- 4.1 Subject to any terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the goods before, on, or after the time of delivery. If the Buyer is to collect the goods and fails to do so or wrongfully refuses to take delivery the Seller shall be entitled to invoice the Buyer for the price where it has not already done so anytime after the Seller has tendered delivery of the goods.
- 4.2 Where the contract provides for delivery by instalments, invoices may be rendered separately for each instalment at the option of the Seller.
- 4.3 The Buyer shall pay the price of the Goods within 30 days from the last day of the month in which the Seller's invoice was raised. The time of payment of the price shall be on the essence of the contract.
- 4.4 Payment for the goods shall be made by direct payment by BACS to the Seller's bank account (details of which are shown on the Seller's delivery note), quoting the Buyer's account number and the items to which the payment relates.
- 4.5 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 4.5.1 cancel the Contract and suspend any further deliveries;
 - 4.5.2 appropriate any payment made by the Buyer to such of the Goods (or to Goods supplied under any other contract) as the Seller thinks fit.
 - 4.5.3 charge the Buyer interest on the amount unpaid at the rate of 2% per annum above the Bank of England base rate from time to time until payment in full is made; and
 - 4.5.2 charge a debt collection fee of up to £100 should such action become necessary.

Delivery

- 5.1 While the Seller will endeavour to meet any date or period quoted by the Seller or discussed with the Buyer for a despatch, delivery or performance it is intended as an estimate only and is not to be of the essence of the Contract. The Buyer shall nevertheless be bound to accept the Goods ordered whether available on or after the date quoted or discussed.
- 5.2 Notwithstanding that the Seller may have delayed or failed to deliver the Goods or any of them promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full providing that delivery shall be tendered at any time within two months of the estimated delivery date without liability for any loss or damage arising from such late delivery
- 5.3 Where the goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions, or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 5.4 The Buyer shall take delivery of the Goods at the Buyer's address shown on the delivery note immediately that the Goods are ready for delivery and shall provide the Seller with adequate delivery instructions at the time stated for delivery having made all and any necessary arrangements. If the Buyer fails to do so without prejudice to any other rights or remedies of the Seller the Seller may entirely at the Seller's option:
 - 5.4.1 store the goods until actual delivery and make a reasonable charge for or recover the costs of storage and insurance until actual delivery;
 - 5.4.2 if Goods are returned undamaged within 14 days for a reason acceptable to the Seller the Goods will be accepted subject to the immediate payment of a handling charge of 15% of the total invoiceable amount plus VAT. **Orders for non-stock Goods cannot be returned or cancelled.**

Risk and Property

- 6.1 Risk in the Goods shall pass to the Buyer when the Goods are collected or delivered.
- 6.2 Property and title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds the full price of the Goods and any other monies owing including VAT.
- 6.3 Until title to the Goods passes to the Buyer the Buyer shall be the bailee of the Goods and shall:
 - 6.3.1 keep the Goods in good and substantial repair and condition, properly stored, protected, insured and identified and recorded as the property of the Seller;
 - 6.3.2 if the Seller so requests, at the Buyer's expense, immediately return the Goods to the Seller or permit the Seller to enter upon any of the Buyer's premises where the Goods are stored or where they are reasonably thought to be stored in order to inspect and/or repossess the Goods or any of them. The Buyer hereby grants the Seller an irrevocable licence to enter any premises where the Goods are stored in order to repossess or inspect them at any reasonable time.
- 6.4 If any of the Goods owned by the Seller are attached to, mixed with or incorporated into any other goods not owned by the Seller so that the Goods are no longer separate from the resulting composite or mixed goods, then immediately upon manufacture all such composite or mixed goods shall belong to the Seller absolutely and not by way of charge until the Goods have been paid for in full, or the Seller recovers possession of or resells sufficient composite or mixed goods to discharge the purchase price and costs in full.
- 6.5 The Buyer shall not be entitled to pledge or in anyway charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owed by the Buyer to the Seller shall forthwith become due and payable.
- 6.6 Notwithstanding that property in the goods has not passed from the Seller. The Seller shall be entitled to recover the price of the Goods together with VAT.
- 6.7 Where property in Goods has not passed the Seller may nevertheless maintain an action against the Buyer for the purchase price and all other monies owing by the Buyer in relation to the Goods.

Special Design and Specifications

- 7.1. If the goods are to be manufactured, service provided or any process is to be applied to the Goods by the Seller in accordance with a design or specification prepared by the Seller in accordance with the Buyer's requirements, the placing of an order by the Buyer for the Goods shall constitute acceptance and approval by the Buyer of such design and/or specifications.
- 7.2. It is the Buyer's responsibility to ensure the Goods will be fit for their particular purpose, and no term, warranty or condition to the effect that Goods are fit for any particular purpose shall be implied into the Contract.
- 7.3. The Seller will not accept any liability for any defect arising as a result of drawings, design, specification or information supplied and/or approved by the Buyer or any drawing, design, specification or information supplied by the Seller and approved by the Buyer.
- 7.4. The Buyer will indemnify the Seller against all loss, damage, costs and expenses awarded against or incurred by the Seller in connection with:
 - 7.4.1. any claim for infringement of any patent, copyright, design, trade mark or any other intellectual rights of any person which results from the Seller's use of the Buyer's design or specification or arising from the way in which the Buyer uses the Goods purchased from the seller;
 - 7.4.2. any claim arising or occurring as a result of the Seller manufacturing, providing a service or applying any process in accordance with the Buyer specification and/or design.

Acceptance

- 8.1. The Buyer shall be deemed to have accepted the goods unless:
 - 8.1.1. where Goods have been damaged in transit and where such damage is obvious on reasonable inspection at the time of delivery the Buyer notifies the carrier of the damage at the time the Goods are delivered and endorses the delivery note accordingly;
 - 8.1.2. the Buyer shall inspect the Goods as soon as is reasonably practicable after receipt to check the Goods are as ordered and in good condition;
 - 8.1.3. in all cases the Buyer shall provide the Seller with written notice of rejection of the goods within 3 days of the date of delivery of the returns. Rejected goods should be returned to the Seller within 10 days thereafter. If latent defects become apparent written notice of rejection of the Goods should be provided to the Seller within 3 days of the date upon which the defect became apparent and return the rejected Goods to the Seller within 10 days thereafter;
 - 8.1.4. if the Buyer fails to give any such notices the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage apparent on a reasonable inspection of the Goods.
- 8.2. The Seller shall not be liable for any loss of any kind to the Buyer arising from any damage or deterioration to the Goods or other loss occurring after risk has passed to the Buyer, however caused.
- 8.3. No goods delivered to the Buyer which are in accordance with the Contract will be accepted for return except at the absolute discretion of the Seller.
- 8.4. Goods returned without prior approval of the Seller may without prejudice to any rights or remedies which the Seller may have at the Seller's absolute discretion may be resold by the Seller. Such Goods will be subject to a handling charge of 15% of the invoice price plus VAT.
- 8.5. Where the Goods are shown to be defective at the time of delivery by reason of faulty workmanship or materials the Seller shall at its sole discretion be entitled to repair or at the option of the Seller replace the Goods free of charge or refund to the Buyer the price or a proportion of part of the price.

General Liability

- 9.1. Except for death and personal injury caused by the Seller's negligence the Seller shall not be liable for any loss, consequential, indirect or otherwise suffered by the Buyer whether this loss arises from breach of duty in the contract, in tort, or any other way (including loss arising from Seller's negligence) including without limitation loss of profit, loss of contracts, damage of property of a customer or anyone else.
- 9.2. The Seller shall have no liability in respect of any defect in the Goods which arises out of:
 - 9.2.1. the Buyer's failure to use the Goods in accordance with the Seller's instructions;
 - 9.2.2. the Buyer's negligence, reuse, alteration or repair to the goods or information supplied under clause 2.2;
- 9.3. In the event of any breach of this Contract by the Seller the remedies for the Buyer shall be limited to damages which shall not exceed the price of the Goods.

Termination

- 10.1. The Seller shall have the right to immediately terminate the Contract upon giving notice to the Buyer in the following circumstances:
 - 10.1.1. if the Buyer fails to make payments for the Goods in accordance with the Contract or commits any other breach of any other agreement or exceeds its credit limit;
 - 10.1.2. if the Buyer makes any voluntary agreement with its creditors or becomes subject to an administration order or (being individual or firm) becomes bankrupt or (being a company) goes into liquidation (other than for the purpose of amalgamation or reconstruction); or
 - 10.1.3. an encumbrancer takes possession, or a receiver, administrative receiver or administrator is appointed, over any of the property or assets of the Buyer; or
 - 10.1.4. the Buyer ceases or threatens to cease, to carry on business or;
 - 10.1.5. the Seller reasonably apprehends that any events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2. In the event of any of the above occurring, the Seller may at its absolute discretion and without prejudice to any rights which it may including the right of recovery under clause 6 suspend all future delivery of Goods to the Buyer and/or terminate the Contract without liability upon its part and/or prejudice to the exercise of any of its rights pursuant to the terms of this Contract.
- 10.3. Upon the occurrence of any of the events set out in paragraphs 10.1 above all sums outstanding in respect of the Goods shall become payable immediately to the Seller.

Force Majeure

- 11.1. The Seller shall not be liable to the Buyer or be deemed to be in breach of contract by reason of any delay in performing or failure to perform any of the Seller's obligations in relation to Goods if the delay or failure was due to any circumstances beyond the Seller's reasonable control, including but not limited to acts of God, war, insurrection and civil disturbance, measures of any kind on the part of any government authority, strikes, lockouts or industrial action, difficulties on obtaining materials, labour, fuel, parts or machinery, power failure and breakdown in machinery.

Proper Law of the Contract

- 12.1. The contract shall be governed by the Law of England and Wales and all disputes arising out of the contract shall be submitted to the jurisdiction of the courts of England and Wales. Either party shall have the right to take proceedings in any other jurisdiction for the purposes of enforcing a judgment or order obtained from the Courts of England and Wales.

Waiver

- 13.1. No waiver or forbearance by the Seller whether express or implied in enforcing any of its rights under this contract shall prejudice its rights to do so in the future.

Entire Agreement

- 14.1. This contract embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior or written agreements, understandings or arrangements relating the subject matter of the agreement.
- 14.2. These conditions shall not be modified, varied or supplemented unless agreed in writing by the Seller.

Notices

- 15.1. Any notice required or permitted to be given by either party to the other under this Contract shall be in writing and addressed to the other party at its registered office or principal place of business or at such other address as may be agreed by the parties.

Third Party Rights

- 16.1. The provisions of the Contracts (Rights of the Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of the Contract.

Severability

- 17.1. If any provision of these Conditions shall be held by a competent authority to be invalid or unenforceable the remainder of the provisions shall remain unaffected.