

TERMS AND CONDITIONS OF BUSINESS – PURCHASE OF GOODS & SERVICES

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Company: CTM Systems Limited.

Contract: the Order and the Seller's acceptance of the Order.

Goods: any goods agreed in the Contract to be bought by CTM Systems from the Seller (including any part or parts of them).

Order: the CTM Systems written instruction to supply the Goods, incorporating these Conditions.

Seller: the person, firm or company who accepts CTM Systems Order.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.5, these conditions are the only conditions upon which CTM Systems is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by CTM from the Seller shall be deemed to be an offer by CTM to buy Goods subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 All Orders must be in writing on CTM's official order form, bearing an order number and signed by an authorised signatory of CTM.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.5 These conditions apply to all CTM's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of CTM.

3. QUALITY AND DEFECTS

3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by CTM to the Seller.

3.2 The Goods shall conform to any of CTM's and/or Seller's industry specific governing specifications as to quantity, quality, standards or descriptions.

3.3 CTM's rights under these conditions are in addition to the statutory conditions implied in favour of CTM by the Sale of Goods Act 1979.

3.4 At any time prior to delivery of the Goods to CTM, we shall have the right to inspect and test the Goods at all times.

3.5 CTM shall at any time prior to delivery of the Goods have the right to inspect:

(a) any goods acquired by the Seller for the purpose of the Order

(b) any production process used by the Seller for the purpose of the Order

Any information received by CTM during such inspections shall be treated as confidential, unless it can be shown that such information was already in the public domain or CTM had prior knowledge of such.

3.6 If the results of such inspection or testing cause CTM to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by CTM to the Seller, CTM shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition CTM shall have the right to require and witness further testing and inspection.

3.7 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations or CTM's remedies under the Contract.

3.8 If any of the Goods fail to comply with the provisions set out in condition 3 CTM shall be entitled to avail itself of any one or more remedies listed in condition 12.

4. INDEMNITY

4.1 The Seller shall keep CTM indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by CTM as a result of or in connection with:

(a) defective workmanship, quality or materials;

(b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and

(c) any claim made against CTM in respect of any liability, loss, damage, injury, cost or expense sustained by CTM's

employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

(d) any claims for death or personal injury, against CTM, to any employees of the Seller or any agent or sub-contractor of the Seller while in or about CTM's place of business.

4.2 The Seller will effect and maintain at its own expense adequate insurance in respect of the above indemnity and shall upon request of CTM produce the certificate of such for inspection.

5. DELIVERY

5.1 The Goods shall be delivered, carriage paid, to CTM's place of business or to such other place of delivery as is agreed by CTM in writing prior to delivery of the Goods. The Seller shall off-load the Goods at its own risk as directed by CTM.

5.2 CTM reserves the right to collect the Goods in its own vehicles. If CTM collects the Goods pursuant to this clause, the Seller will grant to CTM a discount on the amount payable under this order in respect of carriage cost not incurred by the Seller.

5.3 Any carrier appointed by the Seller or specified by CTM shall be agent to the Seller and not CTM.

5.4 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 14 days of the Order.

5.5 Subject to clause 2.6, the Seller shall invoice CTM upon, but separately from, despatch of the Goods to CTM. This invoice shall contain the order number and part number.

5.6 Without prejudice to clause 5.5, the Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, part number, number of packages, contents and contains a suppliers advice note and, in the case of part delivery, the outstanding balance remaining to be delivered.

5.7 Time for delivery shall be of the essence.

5.8 The Seller shall effect and maintain at its own expense adequate insurance over the Goods whilst in transit.

5.9 Unless otherwise stipulated by CTM in the Order, deliveries shall only be accepted by CTM in normal business hours.

5.10 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, CTM reserves the right to:

- (a) cancel the Contract in whole or in part and refuse or return any Goods already delivered under this contract;
- (b) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make, acceptance or full or partial payment for any Goods under this contract does not remove this right;
- (c) recover from the Seller any expenditure reasonably incurred by CTM in obtaining the Goods in substitution from another supplier; and
- (d) claim damages for any additional costs, loss or expenses incurred by CTM which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

5.11 The Goods must be suitably preserved and packed by the Seller. The cost of which will be borne by the Seller.

5.12 If the Seller requires CTM to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to CTM and any such packaging material shall only be returned to the Seller at the cost of the Seller.

5.13 Where CTM agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle CTM at its option to treat the whole Contract as repudiated.

5.14 Where CTM has agreed, pursuant to clause 5.13, to accept delivery by instalments subject to a delivery or works schedule or not, CTM reserves the right, upon reasonable notice to the Seller, to fix or vary delivery times for one or more of the instalments.

5.15 If the Goods are delivered to CTM in excess of the quantities ordered CTM, unless otherwise agreed in writing, shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense including transport both ways and all handling charges.

5.16 In any inspection under clause 5.15 CTM's count shall be final and conclusive on all shipments.

5.17 CTM shall have the right to reject the Goods as though they had not been accepted for 7 days after any latent defect in the Goods has become apparent.

6. RISK/PROPERTY

The Goods shall remain at the risk of the Seller until delivery to CTM is complete (including off-loading and stacking) when ownership of the Goods shall pass to CTM.

7. PRICE

7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by CTM shall be exclusive of value added tax but inclusive of all other charges.

7.2 No variation in the price nor extra charges shall be accepted by CTM, unless with previous written consent from CTM and at least 3 months' notice from the Seller of such change.

7.3 If prior to delivery of the Goods the Seller sells the same or similar goods in the UK for a lower price than under this contract, CTM shall be entitled to pay such lower price.

7.4 If in breach of clause 7.1, the price of the Goods was not stipulated in the Order, the price charged by the Seller to CTM shall be the lower of:

- (a) the current published price;
- (b) the last quoted price from the Seller to CTM for the same or similar goods;
- (c) the last price paid by CTM to the Seller for the same or similar goods.

8. PAYMENT

8.1 CTM shall pay the price of the Goods within 60 days of the month end of the date of the invoice issued, but time for payment shall not be of the essence of the Contract.

8.2 Without prejudice to any other right or remedy, CTM reserves the right to set off any amount owing at any time from the Seller to CTM against any amount payable by CTM to the Seller under the Contract.

8.3 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgement, at 2% per annum over HSBC plc base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

9. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial knowhow, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by CTM or its agents and any other confidential information concerning CTM's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to CTM and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

10. CTM'S PROPERTY

10.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by CTM to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of CTM but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to CTM and shall not be disposed of other than in accordance with CTM's written instructions, nor shall such items be used otherwise than as authorised by CTM in writing.

10.2 Goods of CTM's design, or which are designed by the Seller for or at CTM's special requirements, may not be supplied by the Seller to anyone other than CTM without prior written consent.

10.3 Any materials supplied by CTM to the Seller for the purpose of the Order (whether charged to the Seller or not) shall remain the property of CTM and may only be used in fulfilling CTM's Order. The Seller shall, on the request of CTM, provide true and accurate records of consumption of such material.

11. TERMINATION

11.1 CTM shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and CTM shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 CTM shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

- (a) the Seller commits a material breach of any of the terms and conditions of the Contract; or
- (b) any distress, execution or other process is levied upon any of the assets of the Seller; or

(c) the Seller 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 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 Seller or notice of intention to appoint an administrator is given by the Seller 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 Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or

(d) the Seller ceases or threatens to cease to carry on its business; or

(e) the financial position of the Seller deteriorates to such an extent that in the opinion of CTM the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of CTM accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

12. REMEDIES

Without prejudice to any other right or remedy which CTM may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract, CTM shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by CTM:

(a) to rescind the Order;

(b) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

(c) at CTM's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

(d) to refuse to accept any further deliveries of the Goods but without any liability to the Seller;

(e) to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

(f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

13. ASSIGNMENT

13.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of CTM, and even after such assignment the Seller shall remain liable for due fulfilment of all obligations under this contract.

13.2 CTM may assign the Contract or any part of it to any person, firm or company.

14. FORCE MAJEURE

14.1 CTM reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of CTM including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

14.2 If delivery or completion of the Goods is delayed by circumstances beyond the reasonable control of the Seller, including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, CTM may, in its absolute discretion, grant an extension of time for delivery or completion of the Goods to the Seller, so long as CTM is notified by the Seller of such events immediately.

15. GENERAL

15.1 Each right or remedy of CTM under the Contract is without prejudice to any other right or remedy of CTM whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by CTM in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by CTM of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

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

15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.