

1. Definitions and Application

- (a) In these conditions:-
 "the Buyer" means the immediate Purchaser of the goods from the Seller.
 "the Contract" means the relevant contract to which these conditions apply.
 "the Goods" means the goods (including any instalment of the goods or any parts for them which the Seller is to supply in accordance with these conditions)
 "the Services" means consultancy services rendered by Hotkeys Limited.
 "the Seller" means Hotkeys Limited.
 "the Stated Price" means the agreed price for the goods stated in a contract of sale to which these conditions apply.
 "Writing" includes telex, cable, facsimile transmission and comparable means of communication.
- (b) The uniform laws on international sales shall not apply.

THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE SELLER'S LIABILITY AND THOSE WHICH REQUIRE THE BUYER TO INDEMNIFY THE SELLER IN CERTAIN CIRCUMSTANCES.

2. Scope of the Contract

- (a) Quotations are not binding on the Seller, who may refuse to accept any order and may withdraw it before acceptance of the order. An order shall be deemed to be accepted only when the Seller has sent a written acceptance or has commenced work upon, or despatched or otherwise appropriated items for performance of the order.
- (b) Acceptance will be subject to these conditions and the express terms of the quotation and no qualification or condition contained in any request for quotation, order or other communication from the Buyer shall form any term of the contract unless expressly accepted in writing by a Director of the Seller.
- (c) Unless otherwise stated therein a quotation will lapse in any event 30 days after its date of issue.
- (d) Orders are accepted subject to the credit status of the Buyer being satisfactory to the Seller and the Seller may cancel the contract if its credit enquiries about the Buyer at any time prove unsatisfactory.
- (e) Acceptance of a quotation must be accompanied by all information necessary for the Seller to proceed with the contract. If work is delayed or additional costs incurred through lack of such information or changes in information, the Seller may amend the contract price to cover the additional costs and/or extend the delivery date.
- (f) The Seller's employees or agents are not authorised to make any representations concerning the goods unless confirmed by the Seller in writing. In entering into the contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- (g) The Seller shall incur no liability to the Buyer for misrepresentation by virtue of any statement made by or on behalf of the Seller prior to the contract whether orally or in any letter, document or sales literature, and the Buyer shall not be entitled to rescind the contract on the grounds of any such misrepresentation.

3. Delivery of Goods

- (a) Unless the acknowledgement of the order expressly provides otherwise delivery of the goods shall normally be made to the Buyer's address on the delivery date. The Buyer shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery.
- (b) The Seller will make such arrangements for carriage and any insurance which the Buyer directs it to make as it thinks appropriate and the Seller shall not be liable to the Buyer in any way for the arrangements so made.
- (c) The Buyer will indemnify the Seller against any costs or expenses the Seller may incur in making those arrangements.
- (d) The goods shall be treated as having been delivered to the Buyer as soon as they are delivered to the carrier.
- (e) The goods shall be at the Buyer's risk from the moment they are delivered to the carrier.
- (f) The Seller may deliver the goods by separate instalments. Each separate instalment may be separately invoiced by the Seller and should be paid for in accordance with these conditions.
- (g) The failure of the Buyer to pay for any one or more of the said instalments of the goods on the due dates shall entitle the Seller (at the sole option of the Seller):-
- i) Without notice to suspend further deliveries of the goods pending payment by the Buyer; and/or
 - ii) To treat the contract as repudiated by the Buyer
- (h) The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the goods (or any of them) promptly or at all.
- (i) 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 provided that payment shall be tendered at any time within six weeks of the delivery date.
- (j) It is a condition of the contract that the Buyer will give the Seller instructions for the delivery of the goods within seven days of being notified by the Seller that the goods are ready for delivery. If the Buyer fails to give instructions for delivering the goods within that period, the Seller may exercise either of the following rights:-
- i) Treat the failure to give instructions for delivery of the goods as a repudiation of the contract and terminate the contract with immediate effect; in that case the Seller may also do any or all of the following:
 - (1) Dispose of the goods as it thinks fit;
 - (2) Retain all payments made by the Buyer prior to termination;
 - (3) Recover damages from the Buyer in respect of (i) the costs of storing the goods and (ii) the costs of arranging for their disposal and (iii) any other losses suffered as a result of the Buyer's breach or as a result of termination of the contract
 - ii) Arrange for the storage of the goods; in that case:-
 - (1) The goods shall be at the Buyer's risk as regards all loss or damage;
 - (2) The Buyer will be responsible for the costs of storing the goods and will reimburse the Seller all expenses incurred in connection with such storage;
 - (3) The Buyer will pay the Seller a reasonable fee for its services in connection with the storage of the goods.

4. Force Majeure



If performance of the Seller's obligations is delayed or hindered by circumstances outside the Seller's control amounting to Force Majeure, the following provisions shall apply:-

- (a) The Seller will as soon as reasonably practicable give the Buyer notice of the reasons for the delay or hindrance. However, failure to give such notice will not prevent the Seller relying on the remaining provisions of this Clause and the Seller will incur no liability for failure to give such notice.
- (b) The Seller's duty to perform shall be suspended for as long as the circumstances amounting to Force Majeure continue, and the time for performance of the Seller's obligations shall be extended by a period equal to the duration of those circumstances.

5. The price and payment

- (a) The price shall be the Seller's quoted price. The price is exclusive of Value Added Tax which shall be due at the rate ruling on the date of the Seller's invoice.
- (b) On acceptance by the Seller of the Buyer's order for the goods an initial deposit of 20% of the quoted price for the goods will become immediately payable by the Buyer.
- (c) Payment of the price and Value Added Tax shall be due on the date of the Seller's invoice. If the price is not then paid, the Seller may bring an action for the price even though property has not then passed to the Buyer and notwithstanding that delivery may not have taken place. Payment is deemed to be made when the Seller's Bank Account is credited with the amount due with cleared funds. The Seller may invoice and apply for payment of each shipment separately.
- (d) The Buyer shall make all payments hereunder in full, without deduction, set-off or counterclaim whatsoever from or against the same except as required by law and regardless of any delays in delivery or performance or any corrections or adjustments that may be necessary to the goods.
- (e) The time for performance of the Buyer's obligations (whether as to payment or otherwise) shall be of the essence so that failure to perform shall entitle the Seller at its option to treat the contract as repudiated by the Buyer or to delay payment or otherwise withhold performance (in which event the Seller's time for performance shall be extended accordingly). In the case of delivery by instalments, failure to perform in respect of one shipment shall entitle the Seller at its option to cancel or delay or withhold performance in respect of that shipment or other shipments or to treat the whole contract as repudiated by the Buyer.
- (f) If any monies payable by the Buyer to the Seller are not paid when due or if the Buyer is in breach of any of its obligations (whether under the contract or any other agreement with the Seller) or becomes bankrupt, enters into liquidation, has an administration order made in respect of it or suffers the appointment of a receiver to all or any of its assets, the Buyer shall immediately pay to the Seller all monies payable by the Buyer under the contract or any other agreement with the Seller (whether or not then otherwise due for payment) and without prejudice to any other remedy.
- (g) The Seller shall have the following rights in respect of the contract and every other agreement with the Buyer:-
 - i) To suspend or cancel the delivery of any further goods or services and any other performance by the Seller (and if suspended the Seller's time for performance shall be extended accordingly);

- ii) To terminate all or any part of the contract and any unexecuted contract with the Buyer.
- (h) The Buyer shall pay to the Seller by way of full indemnity all costs of any nature incurred by the Seller arising from the breach by the Buyer (including but not limited to all legal costs on a full indemnity basis).
- (i) The Buyer shall pay interest (after as well as before judgment) on any monies payable by the Buyer to the Seller which are not paid when due at an annual rate of 4 percentage points above the Base Rate of Barclays Bank Plc from time to time compounded with monthly rests calculated from the date of due payment until the date of actual payment.
- (j) In the event of variation or suspension of work due to the Buyer's instructions, the Seller by written notice to the Buyer may increase the price by such an amount as it reasonably considers will fairly compensate for additional cost thereby incurred by it. The Seller by notice to the Buyer at any time before delivery may increase the price of the goods to reflect any increase in the cost to the Seller which is due to any factor beyond its control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications of the goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer, or failure of the Buyer to give the Seller adequate information or instructions.

6. Retention of Property

- (a) In spite of delivery having been made property in the goods shall not pass from the Seller until:-
 - i) The Buyer shall have paid the price plus Value Added Tax in full; and
 - ii) No other sums whatever shall be due from the Buyer to the Seller.
- (b) Until property in the goods passes to the Buyer in accordance with Clause 6(a) the Buyer shall hold the goods and each of them on a fiduciary basis as Bailee for the Seller. The Buyer shall store the goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- (c) The Seller shall be entitled to recover the price (plus Value Added Tax) notwithstanding that property in any of the goods has not passed from the Seller.
- (d) Until such time as property in the goods passes from the Seller, the Buyer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so, the Seller may enter upon any premises owned occupied or controlled by the Buyer where the goods are situated and repossess the goods.
- (e) The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- (f) The Buyer shall insure and keep insured the goods to the full price against all risks to the reasonable satisfaction of the Seller until the date that property in the goods passes from the Seller and shall whenever requested by the Seller produce a copy of the Policy of Insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.



- (g) If the Buyer is a limited company, it shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part VII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- (h) The Seller shall be entitled to apply payments received from the Buyer in satisfaction of whichever invoice or part thereof as the Seller shall in its absolute discretion decide and shall be entitled to vary such application as many times as it shall desire until such time as all sums owing by the Buyer to the Seller have been paid.

7. Guarantee

- (a) Subject to the conditions set out below the Seller warrants that the goods will correspond with their specification at the time of delivery and will be free from defects in materials or workmanship for a period of twelve months from the date of delivery. The Seller's liability for breach of warranty shall be limited solely to replacing or repairing without charge the defective goods or part thereof.
- (b) The above warranty is given by the Seller subject to the following conditions:-
 - i) The Buyer shall have notified the Seller of the defect(s) in writing within 7 days of the relevant defect(s) becoming apparent;
 - ii) If requested by the Seller the Buyer shall have returned such defective goods or part thereof suitably packaged and at the Buyer's risk describing the circumstances in which such goods or part thereof become defective;
 - iii) The Seller shall be under no liability in respect of any defect in the goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Seller's approval;
 - iv) The above warranty does not extend to parts, materials or equipment not supplied by the Seller, in respect of which the Buyer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacture to the Seller;
 - v) The Buyer has performed its obligations hereunder;
 - vi) Before returning the goods to the Seller, the Buyer shall obtain from the Seller a returns authorisation number which shall be quoted when the goods are returned. Failure to return the goods within 1 month of being advised of a return authorisation number shall mean that the relevant payment for the goods if not already paid is due in full.
- (c) Subject as expressly provided in these conditions, and except where the goods are sold under a Consumer Sale (as defined by the Sale of Goods Act 1979 or subsequent amendments or modifications) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (d) Where the goods are sold under a Consumer Sale the statutory rights of the Buyer are not affected by these conditions.
- (e) The guarantee shall apply only to the Buyer.
- (f) Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss or profit or otherwise),

costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the Buyer, except as expressly provided in these conditions.

8. Protection of Intellectual Property

- (a) Where the goods include a computer program, the Buyer agrees not to copy or disclose or alter the program without the prior written consent of the Seller and will in all other respects comply with the terms of any licence granted to the Buyer which relates to the use of such computer programs.
- (b) The Buyer shall not cause or permit anything which may damage or endanger the intellectual property of the Seller in the goods or the Seller's title to it or assist or allow others so to do.
- (c) The Buyer must notify the Seller of any suspected infringement of the intellectual property of the Seller in the goods.
- (d) The Buyer shall take such reasonable action as the Seller may direct at the expense of the Seller in relation to such infringement.

9. Product Liability

- (a) The Buyer shall use all reasonable endeavours to ensure that the goods are operated in accordance with the Instruction Manuals supplied with the goods and shall provide all relevant personnel with all necessary training in respect of the goods.
- (b) The Buyer shall ensure that all warnings displayed on the goods or the packaging at the time of delivery shall not at any time be removed, defaced or otherwise obscured and further the Buyer shall contractually pass such obligation to any third party recipient of the goods.
- (c) The Buyer shall indemnify the Seller against any loss suffered as a result of the Buyer being in breach of any part of this term.

10. Responsibility

The Seller shall not be liable to the Buyer or any person claiming through the Buyer for damage to any of the Buyer's property in the possession of the Seller (whether as consignee or otherwise) or for any injury caused to any person by such property by reason of any cause beyond the reasonable control of the Seller.

11. Delegation and Assignment

The Seller may delegate its performance under the contract and may assign any of its rights or benefits thereunder.

12. Governing Law and Jurisdiction

These terms and conditions and all other express terms of the contract shall be governed by and construed in all respects in accordance with the Laws of England and the Buyer irrevocably submits to the exclusive jurisdiction of the English Courts.

13. General Points

- (a) These terms and conditions apply to all contracts for the sale of goods to or provision of work for the Buyer to the exclusion of any terms and conditions specified by the Buyer.
- (b) The failure by the Seller at any time or for any period to enforce any one or more of these terms and conditions shall not be a waiver of them or a waiver of the right to enforce such terms and conditions on a future occasion.
- (c) Each and every clause and sub-clause of these terms and conditions shall be construed independently of the



other clauses and sub-clauses and in the event of any one being held to be void this shall not operate as to invalidate these terms and conditions. If any such clause or sub-clause shall be adjudged by any Court of competent jurisdiction to be void or unenforceable as going beyond what is reasonable in the circumstances for the protection of the interests of the Seller, but would be valid if part of the wording thereof was deleted and/or the period thereof was reduced the said clause or sub-clause shall apply within the jurisdiction of that Court with such modifications as may be necessary to make it valid and effective.

14. Notices

Any notice required to be given under this contract shall be deemed to be served in the following circumstances:-

- (a) If sent by pre-paid First Class Post to the party to whom it is given at its last known address, in which case it shall be effective on the 3rd day after posting;
- (b) If sent by Fax or Telex to the recipient's Fax or Telex Number, in which case it shall be effective on the next working day after transmission.