

# Terms and Conditions of Sale

## 1. DEFINITIONS

- 1.1 'Buyer' means the person who buys or agrees to buy the Goods (as a sales Contract) from the Seller and where the buyer is two or more individuals the obligations on their part are deemed to be made jointly and severally.
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 'Goods' means the articles which the buyer agrees to buy from the Seller.
- 1.4 'Price' means the price for the Goods current at the date of despatch of the Goods to which shall be added VAT and any other tax or duty relating to the sale or delivery of Goods chargeable to the Seller and (where appropriate) the applicable freight and other carriage charges current at the date of despatch.
- 1.5 'Seller' means Paragon Components Ltd whose registered office is at Tretthowans, Rockstone Place, Southampton SO15 2EP
- 1.6 'Terms of Trading' means the terms agreed between the Buyer and the Seller for the time for payment by the Buyer of the Price and VAT.
- 1.7 A reference to a 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.
- 1.8 Words in the singular include words in the plural and in the plural include the singular.
- 1.9 A reference to one gender includes a reference to the other gender.
- 1.10 Condition headings do not affect the interpretation of these conditions.

## 2. CONDITIONS APPLICABLE

- 2.1 These Conditions shall apply to all contracts for the sale of goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order, or similar document.
- 2.2 All orders or acceptance of a quotation for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Any variations to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.4 The Buyer will ensure that the terms of its order & any applicable specifications are complete and accurate (see 7.4 below).
- 2.5 Only authorised and official written purchase orders or contracts from the Buyer via hard copy or e-mail will be accepted by the Seller (see 14 below). No verbal orders can be accepted under any circumstances.
- 2.6 Any items required to be additional to a previously received order from the Buyer to the Seller must be accompanied by either a revised or new and additional Purchase Order written document otherwise they cannot be accepted.

## 3. THE PRICE AND PAYMENT

- 3.1 The price of the goods shall be the Price stipulated in the Seller's price list current at the date of delivery of the Goods. The price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price and VAT shall be due in accordance with the Terms of Trading. Time for payment shall be of the essence. Extension of Credit term shall be at the Seller's discretion after agreement with the Buyer.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due, including any pre-agreed credit extension period, from day to day until the date of payment at a rate of 5% above the Bank of England base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.
- 3.4 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
  - 3.4.1 Suspend or cancel deliveries of any articles due to the Buyer and/or;
  - 3.4.2 Appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.

## 4. THE GOODS

- 4.1 The quantity and the description of the Goods shall be set out in the Seller's quotation.

## 5. WARRANTIES AND LIABILITIES

- 5.1 All Goods supplied by the Seller are warranted free from any manufacturing defects for 60 months - where applicable - from the date of supply. This warranty does not affect the Buyer's statutory rights when dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12).
- 5.2 The Warranty is given by the Seller subject to the following conditions:
  - 5.2.1 The Warranty does not apply to any defect in the Goods arising from fair wear and tear, wilful damage, faulty installation, accident, negligence by the Buyer or any third party, use otherwise than as recommended by the Seller, failure to follow the Seller's instructions, or any additional equipment which may have caused any product failure, alteration or repair carried out without the Seller's written approval;
  - 5.2.2 The Seller shall be under no liability under the warranty or any other warranty, condition or guarantee if the total Price of the Goods has not been paid by the due date for payment;
  - 5.2.3 The warranty does not extend to parts or materials not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any warranty as is given by the manufacturer to the Seller;
  - 5.2.4 If the Goods develop a defect while under warranty, the Buyer shall notify the Seller in writing within 7 days of discovery of the defect and the potential or possible causes of the defect.
  - 5.2.5 If a notice in clause 5.2.4 is given, the Seller must be given a reasonable opportunity after receiving such notice to examine the Goods and if requested by the Seller, the Buyer must return the Goods to the Seller's place of business at the Seller's cost for the examination to take place there.
- 5.3 Except where the Buyer is dealing as a consumer, all other warranties, conditions or terms relating to fitness for purpose, satisfactory quality or condition of the Goods and whether implied by statute or common law or otherwise are excluded.
- 5.4 Save for liability for death or personal injury caused by the negligence of the Seller or for fraudulent misrepresentation, (which is unlimited) the Supplier's entire liability for any cause of action relating to Goods under this agreement (including negligence or breach of statutory duty, misrepresentation, restitution or breach of contract) shall be limited to the amount of the Price.
- 5.5 The Seller will not be liable to the Buyer for the loss of profit, loss of business, depletion of goodwill, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever which arise out of or in connection with the contract.

## 6. DELIVERY OF GOODS

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises after the Seller has notified the Buyer that they are ready for collection- or if some other place for delivery to the Buyer is agreed by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 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 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.
- 6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest market available) of similar goods to replace those not delivered over the price of the Goods. The Seller will not be liable for any direct, indirect or consequential loss (all three of which include without limitation, pure economic loss, loss of business, depletion of goodwill and similar loss) costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the contract, unless such delay exceeds 180 days.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:
  - 6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs including insurance of storage; or
  - 6.5.2 Sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract.

## 7. ACCEPTANCE OF GOODS

- 7.1 The Buyer Shall be deemed to have accepted the Goods 24 hours after the delivery to the Buyer.
- 7.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.
- 7.3 If the Buyer rejects any of the Goods which are not in accordance with the contract the Buyer shall nonetheless pay the full price for such Goods unless the Buyer promptly gives written notice of rejection to the Seller and (at the Buyer's cost) return such Goods to the Seller before the date when payment of the Price is due.
- 7.4 The Buyer shall notify the Seller in writing via e-mail or hard-copy within 10 working days of the Delivery date of the Goods of any and all discrepancies concerning the delivery or invoicing of any order or contract. Telephone claims cannot be accepted. This action is the sole responsibility of the Buyer, it's representatives or agents as failure to notify will make any later claim absolutely null and void after this time.

## 8. TITLE AND RISK

- 8.1 The Goods shall be at the Buyer's risk as from delivery to the Buyer.
- 8.2 Ownership of the Goods will not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
  - 8.2.1 the Goods; and
  - 8.2.2 all other sums which are or which become due to the Seller from the Buyer on any account;
  - 8.2.3 Payment of the Price shall include, without any limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the Seller and the Buyer.
- 8.3 Until ownership of the Goods passes to the Buyer in accordance with clause 8.2 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.
- 8.4 Notwithstanding that the Goods (or any item) remain the property of the seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 8.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods which have not passed from the Seller.
- 8.6 Until such time as property of 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. On the making of such request the rights of the Buyer under clause 8.4 shall cease.
- 8.7 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.
- 8.8 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.

## 9. EXPORT TERMS

- 9.1 In these Conditions 'Incoterms' means the international rules for interpretation of trade terms of International Chamber of Commerce as in force at the date when the contract is made. Unless the contract requires any term or expression which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these conditions but if there is any conflict between the provision of Incoterms and these conditions the latter shall prevail.
- 9.2 Where the Goods are supplied for export from the United Kingdom the provisions of the clause 9 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions.
- 9.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the Country of destination and for the payment of any duties thereon.
- 9.4 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered to the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979. Delivery of the Goods shall be deemed to have been made when the Seller supplies to the Buyer or the Buyer's carriers a bill of lading for the Goods. Notwithstanding the supply of such a bill of lading the Seller's rights contained in clause 8 herewith shall not be diminished in any way.
- 9.5 The Buyers shall be responsible for the inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 9.6 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller with a bank to be confirmed in favour of a bank nominated by the Seller, payable 30 days at sight against production of an invoice for the Goods and a clean on board bill of lading for the Goods. If the Seller has agreed in writing to waive this requirement then payment to the Seller shall be made by delivery to the Seller of a bill of exchange drawn on the Buyer payable 30 days after sight to the order of the Seller at such a branch of the nominated bank as may be specified in the bill of exchange.

## 10. INSOLVENCY OF THE BUYER

- 10.1 This clause applies if:
  - 10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order (being as an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
  - 10.1.2 An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
  - 10.1.3 The Buyer ceases or threatens to cease to carry on business; or
  - 10.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly
- 10.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without liability to the Buyer and if the Goods have been delivered but not paid for the Price shall be immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 11. REMEDIES OF THE BUYER

- 11.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.
- 11.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of these Goods.
- 11.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.

## 12. FORCE MAJEURE

- 12.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to the circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, 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, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

## 13. GENERAL

- 13.1 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.
- 13.2 Failure or delay by the Seller 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
- 13.3 Any waiver by the Seller of any breach of, or any default under, any provision of the contract by the Buyer by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract.
- 13.4 The Parties to the contract do not intend that any terms 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.
- 13.5 The Formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and parties submit to the non-exclusive jurisdiction of the English courts.

## 14. COMMUNICATIONS

- 14.1 All communications between the parties about the contract shall be in writing and delivered by hand or sent pre-paid first class post or sent by fax or sent by secure e-mail.
- 14.1.1 (In case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller; or
- 14.1.2 (In case of the communications to the Buyer) to the registered office of the address (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the contract or such other address as shall be notified to the Seller by the Buyer.
- 14.2 Communications be deemed to have been received:
  - 14.2.1 If sent pre-paid first class post, two days (excluding Saturday, Sunday and bank and public holidays) after posting (exclusive of day of posting) or
  - 14.2.2 If Delivered by hand, on the day of delivery; or
  - 14.2.3 If sent by fax on a working day prior to 4pm, at the time of transmission and otherwise on the next working day; or
  - 14.2.4 If sent by e-mail on a working day prior to 4pm, at the time of transmission and otherwise on the next working day.