

CLOUD ELECTRONICS LIMITED - TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

- 1.1 In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:
"Buyer" means Cloud Electronics Limited a company registered in England and Wales under number 1536810 whose registered office is at 140 Staniforth Road, Darnall, Sheffield S9 3HF;
"Conditions" means these terms and conditions of purchase;
"Contract" means a contract for the purchase of Goods made by or on behalf of the Buyer with a Supplier;
"Goods" means the goods described in an Order;
"Order" means an order for the Goods placed by the Buyer with a Supplier;
"Supplier" means any person, firm or company with whom an Order is placed; and
"Working Day" means any day from Monday to Friday (inclusive) which is not a statutory holiday.
- 1.2 In these Conditions (unless the context otherwise requires):
- 1.2.1 construction of these Conditions shall ignore the headings (all of which are for reference only); and
- 1.2.2 any reference to any legislative provision shall be deemed to include any subsequent re enactment or amending provision.
- 1.3 These Conditions shall govern and be incorporated into every Contract, and shall prevail over any terms or conditions (whether or not inconsistent with these Conditions) contained or referred to in any correspondence or documentation submitted by the Supplier or elsewhere or implied by custom, practice or course of dealing.

2. ORDER

- 2.1 The Supplier may accept an Order in writing (which includes email and fax). In addition, the Supplier's commencement of delivery of Goods constitutes the Supplier's acceptance of the Order subject to these Conditions.
- 2.2 The Buyer is not liable for any Order unless it has been placed (in writing, by fax or by email) on behalf of the Buyer by its duly authorised representative.

3. DELIVERY

- 3.1 The Supplier shall deliver the Goods at the date, time and place agreed with or specified by the Buyer and time for delivery of a Contract is of the essence. If Goods are incorrectly delivered, the Supplier is liable for any additional expense incurred by either party in handling and delivering the Goods at the correct date, time and place.
- 3.2 The Buyer reserves the right (without prejudice to any other rights the Buyer may have) to:
- 3.2.1 reject Goods not delivered on time; and/or
- 3.2.2 cancel any Contract of which such Goods are the subject; and/or
- 3.2.3 return any Goods already delivered which by virtue of such rejection or cancellation are no longer of use.

4. ACCEPTANCE OF GOODS

- 4.1 If the Goods or any part of them (whether or not inspected or tested by the Buyer) do not comply with the requirements of the relevant Contract, the Buyer may elect to:
- 4.1.1 repair such Goods at the Supplier's expense; or
- 4.1.2 reject such Goods by giving the Supplier notice of such rejection and returning the rejected Goods to the Supplier at the Supplier's risk and expense or requesting that the Supplier collect them from the Buyer's premises.
- 4.2 If the Buyer rejects any Goods, the Supplier will replace them with Goods which are in all respects in accordance with the Contract. If the Supplier fails to replace such rejected Goods within a reasonable time, the Buyer may, at its option and without prejudice to any other remedies it may have:
- 4.2.1 request a refund from the Supplier of any money paid in respect of such rejected Goods; or
- 4.2.2 purchase replacement goods or services from an alternative source at the Supplier's cost.

5. RISK AND TITLE

- 5.1 Risk for and title to the Goods pass to the Buyer on delivery, without prejudice to any right of rejection which may accrue to the Buyer under these Conditions or otherwise.
- 5.2 If the Supplier postpones delivery for any reason, title to the Goods will pass to the Buyer on the date on which such Goods should have been delivered but risk will not pass until the date of actual delivery.

6. PRICE AND PAYMENT

- 6.1 The price for each of the Goods shall be agreed between the Buyer and the Supplier. Where the Goods are subject to VAT, the amount legally due will be specified as a separate item of account.
- 6.2 If the Buyer places an Order on a "price to be agreed" basis, the Supplier will obtain the Buyer's confirmation of the price to be paid before invoicing the Buyer for the Goods.
- 6.3 The Buyer will pay only for the Goods specified in the Order.
- 6.4 If the Goods have been accepted by the Buyer in accordance with the Contract, the Buyer shall make all payments due to the Supplier under such Contract provided that it receives the relevant invoice.
- 6.5 The Buyer may offset any amount owing to it from the Supplier against any amount owed to the Supplier by the Buyer.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 If the Supplier or its employees or agents design the Goods pursuant to a commission from the Buyer (whether to fulfil an Order or otherwise), any intellectual property rights created in relation to such Goods shall vest in the Buyer and the Supplier shall do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this Condition 7.
- ## 8. WARRANTY AND LIABILITY
- 8.1 The Supplier warrants that:
- 8.1.1 the Goods will conform to the specifications referred to in the Order as to quantity, quality and description and any other specifications, requirements or instructions made known to the Supplier;
- 8.1.2 the Goods will be of satisfactory quality, fit for purpose, of good materials and workmanship and free from defects; and
- 8.1.3 the design, construction and quality of the Goods will comply with any relevant statutory rules or regulations in force at the time of delivery, including UK safety standards and British Standards.
- 8.2 The Supplier will pass on to the Buyer the benefit of any additional warranties secured from the Supplier's suppliers.
- 8.3 The Supplier will immediately, at its own cost, repair or replace any defective Goods notified by the Buyer to the Supplier within 12 months (or any longer period expressly agreed) from the date of the Buyer's receipt of the Goods.
- 8.4 The Supplier is liable for damage to or loss of the Buyer's property arising from the performance or non performance of the Supplier's obligations under any Contract.

- 8.5 The Supplier will indemnify the Buyer; its agents, employees, subsidiaries, associated companies and assigns in respect of 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 them as a result of or in connection with:
- 8.5.1 defective workmanship, quality or materials;
- 8.5.2 any alleged or actual infringement of any intellectual property right owned by a third party resulting from the purchase, use or resale by the Buyer; its agents, employees, subsidiaries, associated companies, customers and assigns of the whole or any part of the Goods; and/or
- 8.5.3 any act or omission in the performance or non performance of or in connection with the obligations undertaken by the Supplier pursuant to a Contract, whether due to the negligence of the Supplier, its agents, employees or sub contractors or otherwise, including, without limitation, any loss, liability or cost arising from an injury to a person but excluding any loss, liability or cost arising directly from the Buyer's negligence or where the Supplier has delivered the Goods strictly in accordance with specifications supplied by the Buyer.

- 8.6 The rights and remedies of the Buyer provided in these Conditions are cumulative and are not exclusive of any rights or remedies provided at law or in equity.

9. INSURANCE

- 9.1 The Supplier will at all times insure and keep itself insured with a reputable insurance company against all insurable liabilities under any Contract and in respect of the Goods including, without limitation against all the Supplier's liabilities under Condition 8.
- 9.2 The Supplier will provide all facilities, assistance and advice requested by the Buyer or the Buyer's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance or non performance of a Contract.

10. TERMINATION

- The Buyer may cancel the whole or any part of a Contract at any time by written notice to the Supplier if:
- 10.1 the Supplier breaches any obligation under a Contract; or
- 10.2 the Supplier is acquired by or merges with any third party; or
- 10.3 the Supplier has a bankruptcy order made against it or makes an arrangement or composition with its 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 Supplier or notice of intention to appoint an administrator is given by the Supplier 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 Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
- 10.4 the Supplier ceases or threatens to cease to carry on its business; or
- 10.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11. CONFIDENTIALITY

- The Supplier shall treat all product, customer or business information, drawings, designs and specifications submitted to it by the Buyer as confidential and shall not disclose it to any third party without the Buyer's prior written consent or use it for any purpose except where authorised to do so by the Buyer.

12. GENERAL

- 12.1 If a licence or consent of any government or other authority is required for the supply or carriage of the Goods, the Supplier will obtain such licence or consent at its own expense and produce evidence of it to the Buyer on demand.
- 12.2 The Supplier may not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under a Contract.
- 12.3 The Supplier may not subcontract the performance of the whole or any part of a Contract without the prior written consent of the Buyer.
- 12.4 Any notice given by one party to the other in connection with a Contract must be in writing and may be delivered personally or by pre paid first class post and in the case of post will be deemed to have been given two Working Days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.
- 12.5 If any of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect.
- 12.6 If any of these Conditions is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.
- 12.7 A person who is not party to a Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such Contract. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 12.8 The rights and remedies provided by any Contract may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Buyer shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of a Contract or of a default under a Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of such Contract.
- 12.9 No variation or alteration of any of the provisions of a Contract or these Conditions shall be effective unless it is in writing and signed by or on behalf of each party.
- 12.10 A Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with the law of England and Wales.
- 12.11 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising from or in connection with a Contract or the legal relationships established by or in connection with such Contract.