

CLOUD ELECTRONICS LIMITED - TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:
"Conditions" means these terms and conditions of sale;
"Contract" means a contract for the sale of Goods made by or on behalf of the Supplier with a Customer;
"Customer" means a person to whom the Supplier supplies or is to supply Goods pursuant to a Contract;
"Goods" means the goods which the Supplier supplies pursuant to a Contract;
"Order" means an order in writing, verbally by fax or by email for the Goods received by the Supplier from the Customer;
"Supplier" means Cloud Electronics Limited a company registered in England and Wales under number 1536810 whose registered office is at 140 Stanforth Road, Darnall, Sheffield S9 3HF;
"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, Order, documentation submitted by the Customer or elsewhere or implied by custom, practice or course of dealing.

2. ORDER

- 2.1 The Customer's acceptance of delivery of the Goods shall (without prejudice to Conditions 2.2 and 2.3 or any other manner in which acceptance of these Conditions may be evidenced) constitute unqualified acceptance of these Conditions.
2.2 A quotation by the Supplier does not constitute an offer and the Supplier reserves the right to withdraw or revise a quotation at any time prior before it accepts an Order.
2.3 An order placed verbally shall be confirmed in writing, although the Supplier may choose to accept a verbal order which is not so confirmed.
2.4 The Supplier's acceptance of any Order shall be effective only where such acceptance is made (in writing, by fax or by email) by its authorised representative.

3. DELIVERY

- 3.1 The dates mentioned in any quotation, Order, acceptance form or elsewhere for delivery of the Goods are approximate only and time for delivery is not of the essence and shall not be made so by the service of any notice. The Supplier accepts no liability for failure to deliver on or by a particular date or dates. Without prejudice to the above, where a particular time and/or date have been expressly and specifically agreed with the Supplier, the Supplier shall use reasonable endeavours to deliver the Goods at that time or on that date.
3.2 The Supplier will deliver the Goods to the Customer's premises unless otherwise stipulated or agreed by the Supplier.
3.3 The Customer is solely responsible for unloading the Goods at the point of delivery. The Customer shall indemnify the Supplier against each loss, liability and cost arising as a result of the Supplier or its sub contractors assisting the Customer in the unloading, loading or other removal of the Goods from the point of delivery.
3.4 If the Customer refuses or fails to take delivery of Goods delivered in accordance with a Contract or fails to take any action necessary on its part for delivery of the Goods, the Supplier is entitled to terminate the Contract with immediate effect, dispose of the Goods as the Supplier may determine and to recover from the Customer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).
3.5 Unless otherwise expressly agreed, the Supplier may effect delivery in one or more installments. If delivery is effected by installments, each installment shall be treated as a separate Contract.

4. RISK AND TITLE

- 4.1 Risk for the Goods passes on delivery but title to the Goods (whether separate and identifiable or incorporated in or mixed with other goods) remains with the Supplier until the Customer pays to the Supplier the agreed price for the Goods (together with any accrued interest at the rate specified in Condition 5.7) and all other amounts owed by the Customer to the Supplier in respect of any other goods or agreement.
4.2 Until title to the Goods passes to the Customer under Condition 4.1, the Customer shall:
4.2.1 keep the Goods separately and readily identifiable as the property of the Supplier; and
4.2.2 not attach the Goods to real property.
4.3 If the Customer resells any Goods in which title has not passed to the Customer, such resale shall (as between the Supplier and the Customer only) be made by the Customer as agent for the Supplier.
4.4 At any time before title to the Goods passes to the Customer (whether or not any payment to the Supplier is then overdue or the Customer is otherwise in breach of any obligation to the Supplier), the Supplier may (without prejudice to any other of its rights):
4.4.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Customer hereby authorises; and
4.4.2 require delivery up to it of all or any part of the Goods.
4.5 From the time of delivery until title in the Goods passes to the Customer in accordance with Condition 4.2, the Customer shall insure the Goods for their full value with a reputable insurer and, if the Supplier so requests, ensure that the Supplier's name is noted on the insurance policy. Until title in the Goods passes to the Customer, the Customer shall hold the proceeds of any claim on such insurance policy on trust for the Supplier and shall immediately account to the Supplier with the proceeds.

5. PRICE AND PAYMENT

- 5.1 The price for each of the Goods to be paid by the Customer to the Supplier, unless otherwise agreed, are the Supplier's published list prices current at the time of despatch.
5.2 The Supplier may at any time prior to delivery of the Goods:
5.2.1 withdraw any discount from its normal prices; and
5.2.2 revise prices to take account of increases in costs including, without limitation, the cost of any goods, raw materials, transport, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
5.3 The Supplier shall (if applicable) add to the price of the Goods, and the Customer shall pay, an amount equal to any VAT or other sales tax or duty applicable from time to time to sales or supplies of such Goods.
5.4 The Customer shall make all payments due to the Supplier under any Contract in pounds sterling (or such other currency as is agreed) on or before the date for payment as agreed with the Supplier.
5.5 Time of payment is of the essence of a Contract and the Supplier reserves the right to suspend the provision of Goods to the Customer where any amounts are overdue under any Contract until all such amounts have been paid.
5.6 The Customer is not entitled to withhold payment of any amount due to the Supplier by way of any set off or counterclaim.
5.7 If the Customer fails to pay any amount due to the Supplier under any Contract on the due date, interest shall be added to such amount at the rate of four per cent over the base rate for the time being of The Royal Bank of Scotland plc for the period from the due date until and including the date of receipt (whether before or after judgment).
5.8 If, in the Supplier's view, the Customer's credit worthiness deteriorates before delivery of the Goods, the Supplier may require payment in full or in part of the price prior to delivery, or the provision of security for payment by the Customer in such form as is acceptable to the Supplier.
5.9 The Supplier reserves the right to alter or withdraw at any time any credit allowed to the Customer.
5.10 The Supplier may offset any amount owing to it from the Customer against any amount owed to the Customer by the Supplier.
5.11 Notwithstanding any appropriation by the Customer to the contrary, all payments made by the Customer to the Supplier shall be appropriated first to Goods which have been resold by the Customer and then to Goods which remain in the Customer's possession or control.

6. INFRINGEMENTS OF THIRD PARTY RIGHTS

- 6.1 If at any time it is alleged that the Goods infringe the rights of any third party or if in the Supplier's reasonable opinion such an allegation is likely to be made, the Supplier may at its option and its own cost:
6.1.1 modify or replace the Goods in order to avoid the infringement; or
6.1.2 procure for the Customer the right to continue using the Goods; or
6.1.3 repurchase the Goods at the price paid by the Customer less depreciation at the rate the Supplier applies to its own equipment.
6.2 If any claim is made or action brought or threatened which alleges infringement of the rights of any third party:
6.2.1 the Customer shall notify the Supplier as soon as it becomes aware of any such claim;
6.2.2 the Supplier shall have control over and, at its own cost, shall conduct any such proceedings in such manner as it shall determine; and
6.2.3 the Customer shall provide all reasonable assistance as the Supplier may reasonably request.
6.3 The Customer shall indemnify the Supplier against all loss, liability and cost which the Supplier incurs in carrying out any work required to be done on or to the Goods in accordance with the Customer's requirements or specifications which give rise to any infringement or alleged infringement of the rights of any third party.

7. WARRANTY AND LIABILITY

- 7.1 The Supplier warrants that the Goods will on delivery and for a period of 12 months from the date of delivery:
7.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
7.1.2 be reasonably fit for the purpose for which they are sold.
7.2 The warranties in Condition 7.1 are given on the following conditions:

- 7.2.1 the Supplier is not liable for a defect in the Goods caused by fair wear and tear; abnormal or unsuitable conditions of storage or use or an act, neglect or default of the Customer or a third party;
7.2.2 the Supplier is not liable for a defect in the Goods caused by the use by the Customer in conjunction with the Goods of any ancillary components, connections or cables other than those specified in any instruction manuals or technical documents supplied with the Goods;
7.2.3 the Supplier is not liable for a defect in the Goods which was present on delivery unless it is notified to the Supplier within 30 Working Days of the date of delivery; and
7.2.4 the Supplier is not liable for a defect in the Goods which developed after delivery unless it is notified to the Supplier within the period of 12 months from the date of delivery.
7.3 Where the Supplier receives notification as referred to in Condition 7.2.3 it shall replace the defective Goods or, at its discretion, refund the purchase price of the Goods. Where the Supplier receives notification as referred to in Condition 7.2.4, the Customer shall arrange for the defective Goods to be returned to the Supplier and the Supplier shall, at its discretion, repair or replace the defective Goods.
7.4 Except as set out in this Condition 7, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non supply or delay in supplying the Goods are excluded to the extent permitted by law.
7.5 Subject to the provisions in of Condition 7.7 below, the Supplier is not liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, arising out of, or in connection with, the supply, non supply or delay in supplying the Goods or otherwise in connection with this agreement.
7.5.1 loss or damage incurred by the Customer as a result of third party claims;
7.5.2 loss of actual or anticipated profits;
7.5.3 loss of business opportunity;
7.5.4 loss of anticipated savings;
7.5.5 loss of goodwill;
7.5.6 injury to reputation; or
7.5.7 any indirect, special or consequential loss or damage howsoever caused.
7.6 Subject to Conditions 7.5 and 7.7, the entire liability of the Supplier arising out of or in connection with the supply, non supply or delay in supplying the Goods, or otherwise in connection with this agreement, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, is limited to an aggregate figure of £100,000 in respect of each event or series of connected events.
7.7 Nothing in this agreement shall operate to exclude or restrict the Supplier's liability for:
7.7.1 death or personal injury resulting from negligence;
7.7.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979; or
7.7.3 fraud, fraudulent misrepresentation or deceit.
8. TERMINATION
8.1 On or at any time after the occurrence of any of the events in Condition 8.2, the Supplier may:
8.1.1 stop any Goods in transit;
8.1.2 suspend further deliveries to the Buyer;
8.1.3 exercise its rights under Condition 4; and
8.1.4 terminate any Contract forthwith by giving notice to that effect to the Customer.
8.2 The events are:
8.2.1 the Customer being in breach of any obligation under a Contract or these Conditions; or
8.2.2 a meeting being convened, a petition presented, an order made, an effective resolution passed, or notice given for the Customer's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction); or
8.2.3 an application being made, or resolved to be made by any meeting of the Customer's directors or members, for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator being appointed; or
8.2.4 an incumbrancer taking possession, or a receiver or manager or administrative receiver being appointed, of the whole or any part of the Customer's assets; or
8.2.5 the Customer ceasing or suspending payment of any of its debts or being unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or
8.2.6 a proposal being made for a composition in satisfaction of the Customer's debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986.
8.3 On termination of a Contract, any indebtedness of the Customer to the Supplier shall become immediately due and payable and the Supplier is relieved of any further obligation to supply Goods to the Customer pursuant to that Contract.
9. CONFIDENTIALITY AND SPECIFICATIONS
9.1 The Customer shall treat all product, customer or business information, drawings, designs and specifications submitted to it by the Supplier as confidential and shall not disclose it to any third party without the Supplier's prior written consent or use it for any purpose except where authorised to do so by the Supplier.
9.2 All drawings, designs, specifications and other particulars of dimensions or weight submitted by the Supplier are approximate only and the Supplier accepts no liability for any deviation from them, nor for any errors, omissions or other defects in any such materials not prepared by the Supplier.
10. GENERAL
10.1 If a licence or consent of any government or other authority is required for the supply, carriage or use of the Goods by the Customer; the Customer will obtain such licence or consent at its own expense and produce evidence of it to the Supplier on demand.
10.2 The Customer is not entitled to withhold or delay payment of the price if it fails to obtain any licence or consent, and will pay any additional costs or expenses incurred by the Supplier as a result of such failure.
10.3 In this Condition 10, "Force Majeure Event" means any circumstance beyond the control of the Supplier including, but not limited to acts of God, fire, explosion, adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by suppliers or materials shortages but, for the avoidance of doubt, nothing shall excuse the Customer from any payment obligations under these Conditions.
10.4 If the Supplier is prevented, hindered or delayed from or in supplying the Goods under these Conditions by a Force Majeure Event the Supplier may, at its sole option, and without being liable for any loss or damage suffered by the Customer as a result:
10.4.1 suspend deliveries while the Force Majeure Event continues;
10.4.2 apportion available stocks of Goods between its customers if the Supplier has insufficient stocks to meet orders; and
10.4.3 terminate any Contract forthwith by giving notice to that effect to the Customer.
10.5 The Customer 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.
10.6 The Supplier is entitled at any time to assign or deal with the benefit of any Contract, or sub contract any work relating to any Contract.
10.7 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.
10.8 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.
10.9 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.
10.10 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.
10.11 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 Supplier 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.
10.12 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.
10.13 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.
10.14 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.