

# Terms and Conditions for The Sale of Goods

## 1. INTERPRETATION

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

1.2 Company: Techland Systems International Limited.

Conditions: these Terms and Conditions of Sale.

Contract: any contract between the Company and the Customer for the sale of Goods, incorporating these conditions.

Customer: the person, firm or company who purchases the Goods from the Company.

Goods: any goods agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them).

Sale: the sale of any Goods by the Company to the Customer.

1.3 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.

1.4 Words in the singular include the plural and in the plural include the singular.

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

1.6 Condition headings do not affect the interpretation of these Conditions.

1.7 These Conditions apply only to Customers who are business customers and not consumers. A Customer is a business customer if the Customer purchases Goods from the Company for the purposes of the Customer's business, trade or profession, rather than for private use. All other Customers are consumers.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.3, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to the sale of any and all Goods by the Company and any variation to these Conditions and any representations about any Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions.

2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued and executed by the Company.

2.6 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches a written acknowledgment of order to the Customer. Any quotation is valid for a period of 30 days only from its date (unless stated otherwise on the face of the quotation), provided that the Company has not previously withdrawn it.

2.7 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

2.8 Any Customer wishing to purchase Goods through the Company's website is hereby referred to Condition 12 of these Conditions.

### **3. DESCRIPTION**

3.1 The quantity and description of any Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.3 If any Goods are to be produced, designed, built or configured and/or any process is to be applied to any Goods by or on behalf of the Company and/or in accordance with any specification submitted by the Customer, then the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any patent, copyright, design,

trade mark or any other intellectual property right of any other person, resulting from the Company's use of any specification so submitted.

3.4 Without prejudice to Condition 3.1, the Company shall use its reasonable efforts to supply the Goods in accordance with any specification submitted by the Customer and approved by the Company, but may affect minor modifications to any such specification without the Customer's approval.

3.5 Subject to the provisions of Condition 9.2 (b), the Customer shall be solely responsible for ensuring the suitability of the Goods for any specific purpose and also for ascertaining the compatibility or inter-operability of the Goods with any other goods.

### **4. DELIVERY AND RETURNS**

4.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.

4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. Should expedited delivery of any Goods be agreed, the Company reserves the right to levy an expedited delivery charge.

4.3 Subject to the other provisions of these Conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, 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 the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.4 If for any reason the Customer fails to take or accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); or

(d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.

4.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.6 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

4.7 Non-faulty Goods may not be returned to the Company for replacement, credit or refund unless the Company agrees otherwise in writing. In any instance where the Company agrees to the return of any non-faulty Goods, the Goods must be returned in their original packaging within 14 days from the date of delivery thereof and in the condition in which they were received by the Customer. The Customer must also pay the return carriage charges. The Company shall not be responsible for any damage to the Goods or for any loss thereof in transit. In any instance where the Company agrees to the return of any non-faulty Goods, the Company reserves the right to charge a restocking fee of up to 20%.

## **5. NON-DELIVERY**

5.1 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.

5.2 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6. RISK/TITLE

6.1 Risk of damage to or loss of the Goods shall pass to the Customer:

(a) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or

(b) in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as the Company's bailee and shall maintain the Goods and their packaging in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and

(b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and

(c) the proceeds of any such sale shall be held by the Customer as the Company's bailee and in a fiduciary capacity, and the Customer shall pay the proceeds into a separate bank account opened for that purpose and approved by the Company and shall ensure that in no circumstances are the proceeds mingled with other money or paid into an overdrawn bank account but are at all times identifiable as the Company's money; and

(d) if the Customer has not received the proceeds of any such sale as referred to in and pursuant to Condition 6.4 (c) it will, if called upon to do so by the Company, assign to the Company within seven days after being required in writing so to do by the Company, all rights against the person or persons by whom the proceeds are owed.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

(a) the Customer 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 and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the

Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

(b) the Customer suffers or allows any execution, distress or diligence, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security, or the Customer ceases to trade; or

(c) the Customer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored or otherwise located, but in any event, and without limitation, hereby undertakes to secure access at any time to any such premises for the Company, its agents and employees in order to inspect the Goods, or, where the Customer's right to possession has terminated, to recover them, and to undertake any work required to remove them, notwithstanding that the Goods may be affixed or attached to any other goods or property.

6.8 The provisions of this Condition 6 shall apply to all Goods notwithstanding the conversion of any Goods by virtue of the admixture of the Goods with any other goods or materials.

## **7. PRICE**

7.1 The price of the Goods shall be the Company's quoted price subject always to the provisions of Condition 2.5.

7.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (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 for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

7.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Customer and the Company, all

prices are given by the Company on an ex works basis and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.

7.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

## **8. PAYMENT**

8.1 Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection.

8.2 The Customer shall pay the price of the Goods (without any deduction, whether by way of set-off, counterclaim, abatement or otherwise) within the earlier of (a) 30 days from the date of the relevant invoice there for, or (b) 30 days following the despatch of the Goods to the Customer. The time of payment of the price shall be of the essence of the Contract.

8.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

(a) cancel the Contract or suspend any further deliveries to the Customer;

(b) appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

(c) charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Lloyds TSB Bank plc's base lending rate from time to time calculated on a monthly basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8.4 In the event that the Company owes money to the Customer under any contract or other arrangement entered into between the Company and the Customer the Company shall be entitled to set off such sums owed by the Company to the Customer against any sums which the Customer shall owe to the Company pursuant to this Contract.

## **9. WARRANTIES**

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to the other provisions of these Conditions):

(a) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

(b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in the acknowledgment of order that it will supply Goods suitable for that purpose, then the Goods shall, on delivery, be reasonably fit for the purpose so stated.

9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:

(a) the Customer gives written notice of the defect to the Company (and also to the carrier, if the defect is a result of damage to any Goods in transit), within 5 days of the time when the Customer discovers or ought to have discovered the defect; and

(b) the Company is given a reasonable opportunity after receiving the notice, of examining any Goods which the Customer has alleged to be defective and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 if:

(a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; or

(b) the Customer alters or repairs the Goods without the prior written consent of the Company; or

(c) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(d) the defect arises from any specification supplied by the Customer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any misuse of the Goods; or

(e) the full price for the Goods has not been paid by the time for payment stipulated in Condition 8.2; or

(f) the defect is of a type specifically excluded by the Company by notice in writing.

9.5 Subject to Condition 9.3 and Condition 9.4, if any of the Goods do not conform with any of the warranties in Condition 9.2 the Company shall, at its option, repair or replace any such Goods

(or the defective part) or issue a credit note at the pro rata Contract rate against any invoice raised for the Goods provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which are defective to the Company. The Company shall, if it opts to replace the defective Goods, then deliver replacement Goods to the Customer at the Customer's premises (at the Company's expense), and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company.

9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods.

9.7 The Company reserves the right to charge the Customer an administration fee of £100.00 in any instance where the Company is unable to verify the existence of the alleged defect, or where the Company determines that the matter falls within the scope of Condition 9.4.

## 10. LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of these Conditions;

(b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission, including negligence, arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company:

(a) for death or personal injury caused by the Company's negligence; or

(b) under section 2(3), Consumer Protection Act 1987; or

(c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

(d) for fraud or fraudulent misrepresentation.

10.4 Subject to Condition 10.2 and Condition 10.3:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection

with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

(b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever or howsoever caused, which arise out of or in connection with the Contract.

## **11. EXPORT TERMS**

11.1 In these Conditions "Incoterms 2000" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2000 shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms 2000 and these Conditions, the latter shall prevail.

11.2 If the Customer requires the delivery of Goods to take place outside the United Kingdom, the Customer must contact the Company's export department, who will advise the Customer regarding the procedures applicable to export orders.

11.3 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 11 shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provision of these Conditions.

11.4 The Customer 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 on them.

11.5 Unless otherwise agreed in advance in writing between the Customer and the Company, the Goods shall be delivered ex works the Company's place of business.

11.6 Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer at Customer's expense in favour of the Company and confirmed by a recognised



European Bank acceptable to the Company or, if the Company has agreed in writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customer payable at sight to the order of the Company at such branch of a nominated British bank in England as may be specified in the bill of exchange.

11.7 The Customer undertakes not to offer the Goods for resale in any country notified by the Company to the Customer at or before the time the Customer's order is placed, or to sell the Goods to any person if the Customer knows or has reason to believe that that person intends to resell the Goods in any such country.

## **12. INDEMNITY**

The Customer shall hold the Company harmless and keep the Company indemnified in full and shall be liable to pay to the Company, on demand, all reasonable costs, charges, losses or expenses (including legal and other professional fees and expenses) sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those losses arising from injury to or the death of any person and loss of opportunity to deploy resources elsewhere), arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of, or breach of, any of its obligations under the Contract, or from any use made or resale by the Customer of any Goods, subject to the Company confirming such costs, charges and losses to the Customer in writing.

## **13. TERMINATION**

13.1 Without prejudice to any other available rights or remedies, the Contract may be terminated immediately upon written notice from the Company to the Customer if:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or

(b) the Customer commits a recurring or material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of receipt of written notice of the breach from the Company; or

(c) any of the events set forth in Condition 6.5 occurs or seems, in the reasonable opinion of the Company, likely to occur; or

(d) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

13.2 On termination of the Contract for any reason:

(a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and

(b) the accrued rights and liabilities of the Company as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13.3 On termination of the Contract (however arising), Conditions 9-14 shall survive and continue in full force and effect.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

The Goods, together with any drawings, documents and other information furnished to the Customer by the Company and all intellectual property rights contained therein are the property of the Company and/or third party licensors of the Company. Any trademarks displayed on the Goods are the registered and/or unregistered trademarks of the Company and/or third party licensors of the Company. Under no circumstances may the Customer use, copy, alter, modify, or change these trademarks or any other proprietary markings on the Goods or any other intellectual property right of the Company and/or any third party licensor of the Company without the Company's prior written consent. The Customer may not copy, alter, modify or adapt the Goods or reverse engineer, decompile, disassemble, modify or create derivative works from the Goods. Nothing contained in or on the Goods should be construed as granting, by implication or otherwise, any license or right to use or disclose to others any intellectual property right of the Company and/or any third party licensor of the Company without the express written permission of the Company. The Customer shall fully indemnify the Company for any loss, damage, cost or expense incurred by the Company resulting from the Customer's infringement of, or unauthorised disclosure of, any intellectual property right of the Company and/or any third party licensor of the Company.

#### **15. ASSIGNMENT AND SUBCONTRACTING**

The Company, but not the Customer, may assign the Contract or any part of it to any person, firm or company and may subcontract any or all of its obligations under any part of the Contract.

#### **16. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery, or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from, or delayed in, the carrying on of its business due to circumstances beyond the reasonable control of the Company 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.

#### **17. GENERAL**

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

17.2 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

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



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

17.5 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.

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