

TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS

1. INTRODUCTION

Unless otherwise expressly agreed in writing all orders and contracts are entered into based on these Conditions to exclusion of all others set out or referred to in any document or communication.

2. DEFINITIONS

“Company” shall mean Cyfas Systems Ltd and its permitted assigns.

“Purchaser” shall mean a person, firm or company whose order for Products is accepted by Company.

“Products” shall mean any item of hardware, engineering design or documentation that Company has agreed in writing to supply to the Purchaser.

“Software” shall mean any computer program or other software which Company has agreed in writing to supply to the Purchaser.

Clause headings are for ease of reference and do not form part of nor shall they affect the interpretation of these conditions.

Where the context so admits or requires words, denoting singular include the plural and vice versa and words denoting any gender includes all genders.

3. QUOTATIONS AND ACCEPTANCE

3.1 Quotations are valid for thirty (30) days unless otherwise stated in writing and represent no obligation until the company accepts the Purchaser’s order.

3.2 The Company reserves the right to reject or postpone the acceptance of any order for clarification if it does not contain sufficient information to proceed.

3.3 Each order, when accepted, constitutes a separate contract and no variation of these conditions shall be binding unless and until such variation has been accepted in writing by a duly authorised officer of the Company.

4. PRICES AND PRICE VARIATION

4.1 All prices quoted are exclusive of VAT

4.2 The Company reserves the right to vary the price prior to acceptance of an order, if the quotation is outside of its validity period, or between the acceptance of an order and the actual delivery date (including but not limited to variations linked to exchange rate, transport costs, taxes, or where the cost increase is due to any act or default of the Purchaser).

4.3 Unless otherwise expressly agreed in writing prices quoted are ex-works. Insurance, carriage, postage and freight will be charged as extras.

4.4 If, as a consequence of any breach of these conditions by the Purchaser or by reasons of the incorrect supply of information by the Purchaser, the Company has to incur extra costs then these extra costs shall be charged to the purchase at the prevailing Company commercial rates.

5.0 DELIVERY

5.1 Any delivery period quoted is an estimate only and commences from the Company’s acknowledgement of the Purchaser’s order. Provided that the Company takes all reasonable endeavours to deliver the Products at the time stated then the Company shall be under no liability for failure to do so.

5.2 The company reserves the right to deliver in more than one consignment and to invoice each consignment separately.

5.3 Where an estimated delivery date is dependant on third party approval or grant to the Purchaser of an operating licence then the Company shall be under no liability to deliver within the estimated or contracted delivery period.

5.4 Unless otherwise agreed in writing all deliveries shall be within the UK and the method shall be at the discretion of the Company. All products will be packed according to the Company’s normal practice but the Company reserves the right to alter the method of packing in respect of individual orders.

5.5 Where the Purchaser wishes to arrange their own transport then the Company shall inform the Purchaser when the Products are ready for collection and the risk in the Products shall immediately transfer to the Purchaser. Should the products not be collected within 3 working days then the Company reserves the right to charge storage at a rate to be agreed. The Products shall be due for invoicing at the point when the purchaser is advised that they are ready for collection.

5.6 Claims for non-delivery, shortage in delivery or loss or damage in transit will not be considered unless both the Company and the carrier are given written notice of such loss or damage within the time required by the carrier’s conditions of carriage. Alternately where delivery is made using the Company’s own transport written notice of any damage or shortfall must be given to the Company within seven days of despatch.

6. PAYMENT

6.1 Unless otherwise agreed in writing the full price (or agreed stage payment) for the Products and any other charges shall be paid in full by the Purchaser within 30 days of the date of invoice with no right of set off.

6.2 Should the Purchaser fail to give the Company delivery instructions then the Company shall be entitled (but not bound) to store the Products and shall have deemed to have passed the risk in the Products to the Purchaser. Payment for the Products and any storage charge levied shall be due forthwith.

6.3 Should the Purchaser fail to pay the invoice in full by the due date then the Company reserve the right to charge interest on a daily basis on the amount outstanding at the rate of 2 % over the prevailing Barclays Bank plc base rate, per month.

6.4 In the case of exports from the UK, unless otherwise agreed, all payments shall be made in the UK through an irrevocable letter of credit confirmed on a London Clearing Bank to be established in favour of the company and to have an initial validity equal to the delivery period plus one month and shall permit part shipments and provide for the release of 100% of the value of each shipment. No liability to deliver Products shall arise before the Company is in receipt of a satisfactory letter of credit.

6.5 The Company reserves the right to suspend delivery or to withdraw credit facilities where payment for any order, related or otherwise, is not received by the due date.

6.6 The Company reserves the right to withhold or refuse contractual performance until the Purchaser has supplied satisfactory credit reference.

7. TITLE AND RISK

7.1 Risk in the goods shall pass to the Purchaser at the point of delivery whether or not the transaction is deemed to be on the Purchaser’s or the Company’s site.

7.2 Products, other than Software, shall become the Purchaser’s property when all sums owed by the Purchaser to the Company have been paid in full. Until then, the Company shall retain legal beneficiary ownership of the Products (whether incorporated into other items or not) which the Purchaser shall hold as bailie and fiduciary for the Company.

7.3 If any sum owed by the Purchaser to the Company becomes overdue for payment or the Purchaser enters into liquidation, receivership or administration, the Company shall have the right, without prejudice to any other remedies, to enter, without prior notice, any premises owned or occupied by the Purchaser and to repossess and dispose of any Products owned by Company.

8. SOFTWARE

8.1 Software shall at all times remain the exclusive property of the Company.

8.2 On delivery to the Purchaser, the Company shall grant the Purchaser a non-exclusive, non-assignable, license to use the Software solely for the Purchaser’s own internal business purposes.

8.3 The Purchaser may make one back-up copy of any Software and upon request, shall advise the Company of the location of any Software and its back-up copy.

8.4 Subject to clause 8.3 the Purchaser may not copy or correct any errors or otherwise modify Software or incorporate Software into any other software without Company’s prior written consent.

8.5 The Company shall undertake such maintenance of the Software as may be agreed in writing with the Purchaser but not otherwise.

8.6 The aforesaid licence is without limit of period but Company may immediately terminate any licence to use the Software by notice in writing to the Purchaser if the Purchaser breaches the terms of the licence or the contract under which the Software has been supplied, whereupon the Purchaser shall, at Company's discretion, immediately return to of the Company's discretion, immediately return to Company or destroy the Software and any back-up copy and certify in writing to Company that this has been done.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All intellectual property rights arising under any order or contract including without limitation those arising from the supply of deliverables or the supply of software shall vest in and be owned by the Company absolutely and the Purchaser shall acquire no right, title or interest save as specified in writing in any order or contract.

10. WARRANTY

10.1 If any defect in the material from which the goods are made or fault in manufacture of the goods shall be found to exist and be reported to the Company in writing within a period of twelve months from the date when the goods are ready for delivery at the Company's premises, or such other period as is expressly agreed in writing by the Company, the Company will repair or at its own option replace the defective part free of charge provided that it is returned to the Company's works, carriage paid and provided also that this warranty:-

- a) does not apply to any damages sustained in transit;
- b) shall cease to have effect if the goods have been used for any purpose other than that for which they were intended or otherwise than in accordance with the Company's instructions, or have been wrongly installed by the Purchaser or a third party to whom the goods may have been directly or indirectly supplied by the Purchaser or stored in improper conditions, or, if installed by Company, removed from such place of installation or otherwise tampered with or if the Company's trademark or serial number has been removed, defaced or altered.

11. LIABILITY

- 11.1 Without prejudice to Clauses 11.2 and 11.3, the Company's maximum aggregate liability for breach of contract shall in no circumstances exceed the order or contract price.
- 11.2 The Company shall be liable for physical damage to the Purchaser's property resulting solely from the Company's negligence up to a maximum of £500,000. Neither corruption of magnetic media nor the loss of data shall constitute physical damage for the purposes of this clause 11.2.
- 11.3 Nothing in these conditions shall exclude or in any way limit the Company's liability for death or personal injury caused by its negligence.
- 11.4 The company does not accept, and hereby excludes, any liability for negligence save as provided in Clauses 11.2 and 11.3.

11.5 These conditions set forth the full extent of the Company's obligations and liabilities in respect of the supply of Products and Software. In particular there are no terms as to satisfactory quality, fitness for a particular purpose or of any other kind whatsoever that are binding on the Company except as specifically stated in these conditions. Any condition, warranty or other term concerning the supply of Products or Software which might be otherwise implied into or incorporated in any contract, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded.

11.6 Without prejudice to clause 11.3 the Company shall not be liable under any order contract or collateral contract for loss or damage of any kind howsoever arising and whether caused by negligence, breach of contract or otherwise.

12. INDEMNITY

12.1 The Purchaser shall indemnify the Company against all actions, claim demands, costs, charges and expenses for Products or Software supplied under a contract except to the extent admitted expressly in these conditions and unless such claim demands, costs, charges and expenses shall have been as a direct result of negligence of the Company and can be attributed to no other cause (whether in whole or in part).

13. INSPECTION AND TESTING

13.1 Any test of the Products or their installation (NOTE: please refer to Terms and Conditions of Site Work) other than those normally carried out by the Purchasers must be separately agreed in writing with the Company.

13.2 If the Purchaser requires that a representative be present at any test the Purchaser shall notify the Company when placing the order and the Company shall give seven days notice in writing to the Purchaser before any test at which the Purchaser's representative fails to attend such test, the Company may nevertheless proceed with such test, which shall have been deemed to have been carried out in the Purchaser's presence.

14. ORDER AMENDMENT AND CANCELLATION

14.1 No order shall be subject to amendment or cancellation by the Purchaser in whole or in part without the written consent of the Company.

14.2 In the event of a cancellation the Company reserves the right to charge the Purchaser by way of liquidation damages the greater sum of 75% of the accepted contract price or the cost of all work carried out and material ordered at the date of cancellation together with a sum equal to a proportion of the total contract price in respect of loss of profit.

15. PURCHASER'S RESPONSIBILITIES

15.1 The Purchaser shall promptly provide the Company with all information and assistance that the Company requests from time to time to facilitate the proper and timely performance of the order or contract.

15.2 The Purchaser warrants that all information provided by it to the Company will be accurate in all material respects and that the purchaser is entitled to provide the information to the Company for its use without recourse to any third party.

16. DEFAULT/INSOLVENCE OF PURCHASER

16.1 If the Purchaser shall default on or commit any breach of contract or of any of its other obligations to the Company, or if any distress or execution shall be levied upon the Purchaser's property or assets, or if the Purchaser shall make or offer any arrangement or composition with creditors, or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against it, or if the Purchaser is a limited company and any resolution or petition to wind up the Purchaser's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of the undertaking, property or assets or any part thereof of the Purchaser (being a limited company) shall be appointed then the Company may without notice:-

- a) Suspend or determine the contract or any unfulfilled part thereof; and
- b) stop any Products or Software in transit; and
- c) recover any goods from the Purchaser's premises for which payment has not been made in full without prejudice to any other right or remedy, which the Company may lawfully enforce or exercise.

17. FORCE MAJEURE

17.1 The company will not be liable for any loss or damage suffered or incurred by the Purchaser arising from the Company's reasonable control. Such events shall include, but not be limited to, riots, war, international emergency, strike, fire, flood, explosion, unavailability of labour or materials, currency restriction.

18. ILLUSTRATIONS AND BROCHURES

18.1 All illustrations, brochures, catalogues, price lists and advertising materials are an indication only of the type of goods offered and no particular therein contained shall be binding on the Company. All prices quoted therein are subject to alteration or withdrawal from time to time without notice.

19. PROPER LAW

19.1 The validity, constructions and performance of the contract or order shall be governed by English Law and unless otherwise agreed by the Company shall be subject only to the jurisdiction of the English Courts.

20. NOTICES

20.1 Any notices relating to these conditions shall be in writing and may be served or delivered to the party at its trading office. Notices shall be sent by either facsimile or first class post, the former shall be considered delivered on the day of transmission, the latter shall be deemed posted forty-eight hours after posting, proof of which shall be required.