

DEFINITIONS

"The Company" means KK Systems Ltd, or any associated or subsidiary company.

"The Buyer" means the person, firm or company to whom the goods are sold.

EXCLUSION OF LIABILITY AND INDEMNITIES

1. (A) Because the potential losses which the Buyer might suffer as a result of any breach of contract or by any act of negligence by the Company are more readily ascertainable by the Buyer AND BECAUSE such losses could be wholly disproportionate to the contract price THE PARTIES AGREE THAT the Company limits its liability in accordance with the following provisions:

(B) (i) Without prejudice to the exclusion clauses herein the Company's liability for loss of or damage to property, whether resulting from the Company's breach of contract and/or acts of negligence, shall not exceed £1,000 for each event or series of events arising from the same cause. If the Buyer requires insurance to cover any potential losses over and above this figure the Company will take reasonable steps to obtain it on the Buyer's behalf at the Buyer's expense.

(ii) The Company shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustration of consequential loss or indirect loss would be:

- loss of profit
- loss of contracts
- damage to property of the Buyer or anyone else
- personal injury to the Buyer or anyone else (but only so far as such injury is not caused by the Company's negligence).

(iii) The Company's liability for loss of or damage to property shall be limited to the cost of the goods supplied whether such loss arises from breach of the duty in contract or tort or in any other way including the Company's negligence.

(C) (i) Unless otherwise stipulated by us all specifications, descriptions, illustrations, drawings, estimates of performance, weights and measures or other information provided by us are approximate only.

(ii) We reserve the right at any time to correct clerical or technical errors in the contract documents.

(iii) Where a product is to be modified to the Buyer's requirements, the Buyer shall furnish us with all necessary specifications with his order. We take no responsibility for goods manufactured, priced, or delivered not in accordance with the order or the specifications, unless the Buyer's order and said particulars are correctly set out by the Buyer without need for any further research by the Company or by the Buyer which it is the Buyer's duty to check. No responsibility is accepted for goods manufactured or priced not in accordance with any requirements of any governmental or other inspecting authority.

(D) The Buyer shall indemnify the Company against all actions, claims, demands, penalties and costs by third parties in tort or for infringement of patents or registered designs or otherwise arising in connection with the goods or with their delivery or unloading or with work done by the Company on the goods in accordance with the Buyer's specifications.

PRICES AND TERMS OF PAYMENT

2. (A) Unless otherwise stated, the prices quoted in the Company's price list do not include any charge for handling or delivering goods.

(B) Time is to be of the essence.

(C) All sums become payable when the Buyer receives the invoice in respect of those sums and unless otherwise agreed our payment terms are net monthly.

(D) The Company reserves the right to charge interest at 15 per cent per annum on all overdue accounts. Interest is deemed to accrue on a day to day basis from and including the date of payment under clause 2(C).

(E) If the Buyer fails to pay an instalment on the date it becomes payable the whole of the balance of the price then outstanding shall become payable at once.

(F) The Company reserves the right to demand security for payment at any time before continuing with or delivering any order.

DELIVERY AND INSPECTION

3. (A) All items which the Buyer is to receive will be delivered to the Buyer's address, if known. In the absence of such address delivery is deemed to take place at the Company's premises.

(B) Delivery dates mentioned in any quotation order or other document are approximate only and not of any contractual effect.

(C) Late performance does not entitle the Buyer to do any of the following:

- reject the goods
- terminate the contract
- withhold payment of any part of the contract price.

(D) The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.

DELIVERY GENERAL

(E) Where:

- Delivery is
 - refused by the Buyer
 - at the request of the Buyer:
 - suspended
 - delayed, or
 - made by instalments

and the company gives notification of readiness to deliver: or

(ii) the Company, due to circumstances beyond its reasonable control is unable to deliver the goods the Company may treat the contract as fulfilled by notifying the Buyer accordingly.

(F) Where the Company treats the contract as fulfilled under clause (i) above:

(i) If the goods are in the Company's possession it shall place the goods into store

(ii) From the date of sending the notification to the Buyer:

the risk of accidental loss of or damage to the goods is on the Buyer, and the duty to pay the price arises.

(G) Where the Company places the goods into store under clause (F)(i) above:

(i) If the Buyer requests the Company shall, and

(ii) In any event, the Company may arrange insurance covering the major perils endorsing the Company's own interest.

(H) The Buyer shall pay for the cost of storage and insurance under clauses (F) and (G) above.

INSPECTION

4. (A) The Buyer is under a duty to inspect the goods on delivery (or on collection by the Buyer if appropriate) wherever it is possible to do so.

(B) If inspection is impossible the Buyer must write on the delivery (or collection) note "goods not examined".

(C) The Buyer shall notify the Company in writing of any short delivery or any defects reasonable discoverable on careful examination. Such notification must be received by the Company within 7 days commencing with the day of the Buyer's receipt of the goods. In the absence of such notification the Company excludes all liability in respect of short delivery or such defects.

QUALITY AND DESCRIPTION

5. (A) Subject to clause 4 above the Buyer acknowledges that he has examined the goods and satisfied himself from the examination that:

(i) the goods are of merchantable quality and

(ii) the goods are fit for his purpose in reliance on his own skill and judgement and that he has not relied for this purpose upon the skill or judgement of the Company unless specifically agreed otherwise and in writing between the parties hereto.

(B) Where the Buyer relies on the Company's description of goods or on samples supplied by the Seller any deviation in quantity or quality of the goods delivered which represent not more than 10% of the value of the goods as stated in this agreement does not give the Buyer any right to reject the goods or to claim damages, but the Buyer must pay for the goods delivered at the contract rate.

BREACH OF AGREEMENT

6. If the Buyer:

(A) Being a Company

(i) has a petition presented for its winding up; or

(ii) passes a resolution for voluntary winding up (other than for the purpose of a bona fide amalgamation or reconstruction); or

(iii) compounds with its creditors; or

(iv) has a receiver appointed of all or any of its assets, or

(B) Being an individual

(i) become bankrupt or insolvent; or

(ii) enters into any arrangements with his creditors; or

(C) In either case commits a serious breach of this agreement (and in the case of such a breach being remediable, fails to remedy it within seven days after receiving notice to do so) then the Company may treat the contract as being at an end.

FORCE MAJEURE CLAUSE

7. (A) The Company accepts no liability for any failure to deliver the goods arising from circumstances outside the Company's control.

(B) Non-exhaustive illustrations of these circumstances are act of God, war, riots, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Government action or regulations (UK or otherwise), delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.

(C) If the Company is prevented from delivering in the above circumstances it shall notify the Buyer of the fact in writing within 10 days commencing with the contractual delivery date.

(D) If the circumstances preventing delivery are still continuing 3 months from and including the date the Company sends such notice, then either party may give written notice to the other cancelling the contract. Such written notice must be received whilst the circumstances are still continuing.

(E) If the contract is cancelled in this way, the Company shall refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount which the Company is entitled to claim from the Buyer) but the Company accepts no liability to compensate the Buyer for any further loss or damage caused by the failure to deliver.

CANCELLATION OF ORDERS

8. Contracts may be cancelled only with the Company's written consent and on terms which would indemnify the Company for all loss including but without limitation:

(i) The full cost of goods manufactured or in the course of manufacture less scrap value

(ii) The full cost of materials in stock less scrap value

(iii) Any cancellation charge suffered by the Company in relation to the cancellation of outstanding material commitments relating to the contract

(iv) The full cost of time spent on development of hardware or software

All orders are subject to the Company receiving any necessary licence to purchase or use and to the Company being able to obtain materials.

TITLE IN THE GOODS

9. (A) Risk in the goods shall pass to the Buyer when the goods are delivered to, or collected by, the Buyer or its agent.

(B) Notwithstanding risk in the goods passing in accordance with clause (A) hereof title in the goods shall not pass to the Buyer until whichever shall be the first to occur of the following:

(i) Payment being received by the Company for the goods and no other amounts than being outstanding from the buyer to the Company in respect of other goods supplied by the Company

(ii) The Buyer selling the goods in accordance with the provisions of these terms and conditions in which case title to the goods shall be deemed to have passed to the Buyer immediately prior to delivery of the goods to the Buyer's consumer; and

(iii) The Company waiving its right under Clause (i) in respect of specified goods whereupon title to the said goods shall forthwith vest in the Buyer.

(C) Before title has passed to the Buyer under the terms of sub-clause (B) above and without prejudice to any of its other rights the Company shall have the right to recover or resell the goods or any of them and may enter upon the Buyer's premises by its servants or agents for that purpose.

(D) Should the Buyer alter the goods or incorporate them into another product or mix them in any way then the resulting product ("altered goods") will pass into the ownership of the Company until payment due under all contracts between the Company and the Buyer has been made in full and all the Company's rights hereunder shall extend to the altered goods.

(E) Until payment due under all contracts between the Buyer and the Company has been made in full:

(i) the Buyer shall hold upon trust for the Company the goods and altered goods;

(ii) in the event of the sale or hire of the goods or altered goods by the Buyer he shall hold the proceeds of such sale or hire on trust for the Company in a separate bank account opened by the Buyer for this purpose;

(iii) the Company shall be entitled to trace all such proceeds of sale or hire charges received by the Buyer through any bank or other account maintained by the Buyer;

(iv) in the event of sale or hire of the goods or the altered goods by the Buyer in the ordinary course of its business the Buyer shall assign its rights to recover the selling price or hire charges from the third parties concerned to the Company if required to do so in writing by the Company.

(F) As the insurance risk in the goods shall pass to the Buyer as soon as the goods are delivered to him or to his order and pending disposal the Buyer shall keep the goods insured in the amount of the price at which the goods are sold to the Buyer against all insurable risks.

(G) If goods are destroyed by an insured risk prior to the same being paid for by the Buyer the Buyer shall receive the proceeds of such insurance as trustee for the Company.

COMPANIES WARRANTY

10. Apart from those terms set out on this page no other terms, express or implied, statutory or otherwise, form part of the contract EXCEPT where the Buyer deals as consumer within Section 12 of the Unfair Contract Terms Act 1977 when the terms set out in Sections 13, 14 and 15 of the Sale of Goods Act 1979 are implied into the contract.

LEGAL CONSTRUCTION

11. The contract shall in all respects be construed and operate in conformity with English Law. If any of these conditions or part thereof is rendered void or unenforceable by any legislation to which it is subject it shall be so void and unenforceable to that extent and no further.

LIMITED WARRANTY

1. Warranty

(A) Warranty is valid for a period of 12 months from date of supply by the Company and covers cost of parts and labour for the repair of faulty products subject to the following conditions:

(B) Products (or part thereof) which have been damaged by being subjected to abuse, mishandling, accident, alteration, failure to follow operating or installation instructions, improper maintenance, use of unauthorised parts or service, etc are not covered by warranty.

(C) The Company shall make the final determination as to the existence and cause of any alleged defect.

(D) No liability is assumed for expendable items such as fuses or media.

(E) The Company shall assume no responsibility whatsoever for any software or data loss or any pecuniary loss suffered otherwise by the Buyer.

2. Buyer's obligations. The Buyer shall:

(A) Be responsible for installing the product where appropriate.

(B) Keep and operate the product in a proper and prudent manner.

(C) Not make any modification or adjustment to it without the prior written consent of the Company.

3. Miscellaneous

(A) The Company's software is sold on an "as is" basis without warranty of any kind. The entire risk as to the quality and performance of such software is with the Buyer. The Company shall have no liability or responsibility to the Buyer or any other person or entity with respect to any claim, loss, liability or damage caused or alleged to be caused directly or indirectly by the Company's software. This disclaimer includes but is not limited to any interruption of services, loss of business or anticipatory profits, or any incidental, consequential, and/or other damages of any kind resulting from the purchase, use or operation of the Company's software.

(B) The Company cannot guarantee the accuracy of printed materials after the date of publication and disclaims liability for changes, errors or omissions.

4. Returns Procedure

(A) Products not purchased directly from the Company cannot be returned to the Company without prior authorisation.

(B) The Buyer must contact the Company for a Return Authorisation Number (RAN) prior to returning any goods.

(C) Any product arriving without a RAN marked clearly on the outside of the carton will, at the Company's discretion, be refused as an "unauthorised return". Where such an item is accepted by the Company, no action will be taken on it for a period of four weeks, after which the item will be disposed of.

(D) Unused RAN numbers become invalid after twenty calendar days.

(E) A copy of the Company's invoice and a description of the purported fault (if any) must be enclosed with all returned goods.

(F) The Company is not responsible for the return of any add-ons (eg Buyer's cables) not originally supplied by the Company.

(G) The Company is not liable for loss or corruption of Buyer's data stored in the Company's product when the product is sent to the Company for whatever purpose.

(H) The Company reserves the right, at its discretion, to replace the entire product with a comparable product or issue an appropriate account credit.

5. Credits or Refunds

(A) Credit or refund for returned product will be issued only if requested within ten working days of the RAN issue date and meets one of the following requirements:

(i) This is the Buyer's first experience with the product, verified by our records and after evaluation (which must have been pre-arranged) he chooses to not keep or stock the product.

(ii) The product is found to be incompatible with the intended application AND this has been verified by the Company's technical staff.

(iii) Credit or refund will not be issued for a defective product. The one year warranty will, however, be honoured.

(B) Overstocking or misordering on the Buyer's part is not an acceptable reason for returning a product for credit. Such a return will incur a restocking charge to be determined on individual cases.

6. Conditions leading to the voiding of the Company's warranty.

The following are non-exhaustive illustrations:

(A) Returned goods not packaged in the original packaging or equivalent.

(B) Returned goods which are out of warranty.

(C) Returned goods which have not been purchased from the Company. These will be returned to the sender at Sender's cost.

(D) Defective goods or goods returned for credit/refund that are received in un-resalable condition or cosmetically altered in any way, eg:

(i) Missing manuals, documentation, CD/diskettes etc.

(ii) Products that are marked or scratched (eg with indelible inks, non removable stickers).

(iii) Incomplete products.

(iv) Products with altered serial numbers or broken factory seals.

(E) Goods damaged in transit to the Company.

(F) Goods which have been modified by the Buyer without a prior written authorisation from the Company.

7. 'No fault found' returned goods

If the Company's test procedures on a returned, purportedly defective product reveal the product to be in good working order then a charge may be applied at the discretion of the Company and the product will be returned to the Buyer only at the Buyer's expense.