



## 1. Interpretation

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

- (a) Company: Electronic Product Services Limited
- (b) Contract: any contract between the Company and the Purchaser for the sale and purchase of the Goods, incorporating these conditions
- (c) Goods: any goods agreed in the Contract to be supplied to the Purchaser by the Company (including part or any parts of them)
- (d) Purchaser: the person, firm or company who purchases the Goods from the Company
- (e) 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
- (f) Words in the singular include the plural and in the plural include the singular
- (g) A reference to one gender includes the other gender
- (h) Condition headings do not affect the interpretation of these conditions.

## 2. General

- (a) The Company submits all quotations and accepts all orders from the Purchaser subject to these conditions which shall apply to all orders for Goods supplied or work done by the Company or its servants, agents, or subcontractors to the exclusion of all other representations, conditions and warranties, statutory or otherwise expressed or implied and to the exclusion of any terms and conditions contained on any of the Purchaser's purchase orders or any other Purchaser document.
- (b) Each order received and accepted by the Company will be deemed to form a separate contract to which these conditions of sale shall apply.
- (c) No contract shall come into existence until such time as the Company has accepted an order either by issuing a written acknowledgement of order or delivering the Goods to the Purchaser.
- (d) The Purchaser shall ensure that the terms of its order and any applicable specification are complete and accurate.
- (e) The Purchaser 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.

## 3. Price

- (a) Quotations are valid for thirty (30) days from the date of the quotation (provided that the Company has not previously withdrawn it) and represent no obligation by the Company until the Company accepts the order in accordance with condition 2(c). Acceptance of the order by the Company shall be deemed to have occurred at the earlier of the Company's written acceptance or delivery of the Goods by the Company.
- (b) Carriage and packing will be charged extra.

## 4. Delivery

- (a) Delivery shall be deemed to take place at the earlier of
  - Collection by the Purchaser, or its agent, at the Company's premises
  - When the Goods arrive at the Purchaser's place of business or
  - Arrival at such other place as the Purchaser may designate to the Company in writing
- (b) All delivery dates are estimates quoted in good faith but time shall not be deemed to be of the essence. If no dates are so specified, delivery shall be within a reasonable time.
- (c) The Company shall not be liable for any loss (whether direct, indirect or consequential), costs damages, charges or expenses whatsoever arising from late delivery of the Goods and nor shall any delay entitle the Purchaser to terminate or rescind the Contract by reason of any such late delivery unless such delay exceeds 21 days.
- (d) The Company reserves the right to deliver in more than one consignment and to invoice each consignment separately. Each consignment shall be a separate Contract and no cancellation or termination of any one Contract relating to a consignment shall entitle the Purchaser to repudiate or cancel any other Contract or consignment.
- (e) If for any reason the Purchaser fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Purchaser has not provided appropriate instructions, documents, licences or authorisations:
  - Risk in the Goods shall pass to the Purchaser (including for loss or damage caused by the Company's negligence)
  - The Goods shall be deemed to have been delivered; and
  - The Company may store the Goods until delivery, whereupon the Purchaser shall be liable for all related costs and expenses.

**5. Non-Delivery**

- (a) The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence to the contrary.
- (b) The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Purchaser gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- (c) 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 rate Contract rate against any invoice raised for such Goods.

**6. Payment**

- (a) Payment shall be due thirty days following the end of the month of the invoice date (net monthly account).
- (b) Time for payment shall be of the essence.
- (c) No payment shall be deemed to have been received until the Company has received cleared funds.
- (d) The Purchaser shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Purchaser.
- (e) If the Purchaser fails to pay the Company any sum due pursuant to the Contract, the Purchaser shall be liable to pay interest to the Company on such sum from the date of invoice accruing on a daily basis until payment is made at the annual rate of 2 % above the base lending rate from time to time of Barclays Bank PLC.
- (f) The Company reserves the right to withdraw the credit terms in paragraph (a) of this clause at any time without notice.
- (g) The Company reserves the right to suspend the deliveries when the Purchaser's account is overdue or the Company has doubts concerning the creditworthiness of the Purchaser. Additionally, in such cases, the Company shall have the right to release any Purchaser reserved or ordered product.
- (h) All payments payable to the Company under the Contract shall become due immediately on its termination.

**7. Title**

- (a) The Goods are at the risk of the Purchaser from the time of delivery.
- (b) Ownership in the goods shall remain with the Company until such time as the Purchaser has paid in full (in cash or cleared funds) all that it owes to Company including the full amount which may be due from the Purchaser to the Company under any other contract, delivery or instalment.
- (c) Until ownership of the Goods has passed to the Purchaser, the Purchaser shall maintain the Goods in satisfactory condition and keep them insured.
- (d) The Purchaser agrees that the Company may, for the purpose of recovery of its Goods, enter the Purchaser's premises and repossess them.
- (e) The Company shall be entitled to recover payment for the Goods notwithstanding that the ownership of the Goods has not passed from the Company.
- (f) The Purchaser's right to possession of the Goods shall terminate immediately if:
  - The Purchaser 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 of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser 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 Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or
  - The Purchaser suffers or allows any execution, 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 Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or
  - The Purchaser encumbers or in any way charges any of the Goods.
- (f) On termination of the Contract, howsoever caused, the Company's (but not the Purchaser's) rights contained in this condition 7 shall remain in effect.



## 8. Warranty and Limitation of Liability

- (a) No liability will be accepted by the Company in respect of damage in transit to or shortage of Goods unless a separate notice in writing is given to the carriers concerned and to the Company, giving full details, within five days of date of delivery. The Company shall have no liability in respect of damage or shortages caused by the acts or omissions of the Purchaser or of others or by causes beyond the Company's control.
- (b) Subject to paragraph 8(g) the Company warrants that for a period of 12 months from the date of invoice the Goods will substantially conform to their related specifications.
- (c) The Company shall not be liable for a breach of the terms in condition 8(b) unless
  - The Purchaser gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Purchaser discovers or ought to have discovered the defect; and
  - The Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Purchaser (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.
- (d) The Company shall not be liable for a breach of condition 8(b) if:
  - The Purchaser makes any further use of such Goods after giving such notice; or
  - The defect arises because the Purchaser failed to follow the Company's 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
  - The Purchaser alters or repairs such Goods without the written consent of the Company.
- (e) The Company's liability in respect of the Goods supplied shall be only to the Purchaser and shall be strictly limited, at the Company's option, to free replacement of the Goods or refund of the purchase price provided the Purchaser gives written notice to the Company within the warranty period and the Goods are returned, carriage paid to the Company's place of business.
- (f) The Purchaser shall not be entitled to receive from the Company any greater benefit under the provisions of this clause than shall be recovered by the Company under any guarantee or warranty given to the Company by the manufacturers or suppliers of the goods.
- (g) The warranty and obligations contained in this section 8 are in place of any and all other warranties, rights or obligations which may be expressed or implied and in particular provisions of the Sale of Goods Act with respect to fitness for the purpose of goods being of satisfactory quality are to the fullest extent permitted by law, expressly excluded.

## 9. Cancellation, Rescheduled and Returned Goods

- (a) The Company will not accept the return of the Goods without prior agreement in writing except in the case of goods covered by condition 8 above.
- (b) The Company will not accept any reschedule or cancellation requests from the Purchaser within the quoted lead time under any circumstances. All requests for cancellation or reschedules are effective only after written confirmation from the Company that they have been accepted.
- (c) In the event of an order being cancelled or rescheduled by the Purchaser, the Purchaser shall indemnify the Company against all losses (including loss of profits) costs and other expenses and damage (whether direct or consequential) occasioned by such cancellation or reschedule.

## 10. Re-Exporting

- (a) Re-exporting of the goods may be controlled by Irish and/or U.S. Government regulations. Appropriate Licences must be obtained prior to export where such controls apply.

## 11. Description

The Company shall make every effort to ensure the accuracy of technical data or literature relating to the Goods but the Company accepts no liability for any damage arising directly or indirectly from any error or omissions in such technical data or literature not being caused by the gross neglect of the Company.

## 12. Assignment

- (a) The Company may assign the Contract or any part of it to any person, firm or company
- (b) The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## 13. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of Goods ordered by the Purchaser (without liability to the Purchaser) 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, provided that if the event in question continues for a continuous



period in excess of 60 days, the Purchaser shall be entitled to give notice in writing to the Company to terminate the Contract.

#### **14. General**

- (a) 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.
- (b) If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, 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.
- (c) Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its right under the Contract.
- (d) Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract
- (e) The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

#### **15. Law**

This contract shall be governed by the laws of Ireland and any disputes arising out of any contract made between the Company and the Purchaser shall be heard and determined by an Irish Court of competent jurisdiction.

Except where the contract is for the international sale of goods (as defined in Section 61 of the Sale of Goods Act 1893 (The "1893 Act") as inserted by Section 24 of the Sale of Goods and Supply of Services Act 1980 (the "1980" Act) no statement contained in this Agreement or on the goods or on a container bearing the goods shall in any way prejudice the contractual rights which the customer enjoys by virtue of Sections 12, 13, 14 and 15 at the 1893 Act as inserted by Section 10 of the 1980 Act save to the extent permitted by Section 55 of the 1893 Act as inserted by Section 22 of the 1980 Act.