

# Terms & conditions of sale

## 1 FORMATION OF CONTRACTS

- a** All contracts of sale made by MotionLink Ltd (referred to herein as 'the Company') shall be deemed to incorporate these terms and conditions. No variation of or addition to these terms and conditions shall form part of any contract unless made or specifically accepted by the company in writing.
- b** These terms and conditions shall override and take the place of any other terms and conditions in any document or other communication used by the purchaser in concluding the contract with the company.
- c** No contract shall come into effect until the purchaser's order has been accepted in writing by the company.
- d** The application of the Uniform Laws on International Sales shall be excluded. The construction validity and performance of all contracts shall be governed by the laws of England and any claim or dispute arising therefrom shall be subject to the jurisdiction of and be determined by the English courts.

## 2 PRICES

Unless otherwise expressly stated in writing by the company orders are accepted on the basis that:

- a** The price stated is exclusive of value added tax or similar taxes which will, where appropriate, appear as separate items on the Company's invoice.
- b** The price stated is the net price of the goods (after deduction of any discounts) for delivery f.o.b. at the port shown herein or otherwise in accordance with the contract.
- c** The Company is entitled, without prior notice, to adjust the price stated to take account of any change in specification made at the request of the purchaser or any alteration before the date of delivery in the cost to the Company of labour, materials, subcontracted services, import or export duties, tariffs or transport which directly affects the cost to the company of supplying the goods.

## 3 PAYMENT

- a** Unless otherwise expressly provided for in writing prices are due and payable in United Kingdom sterling 30 days after the date of invoice in respect of any shipment.
- b** If the purchaser shall fail to make payment in full in accordance with paragraph **a** of this condition then, without prejudice to any other rights of the company, the purchaser shall, without any need for the company to give notice, become liable to pay the company interest on the amount for the time being unpaid. This interest will be paid at the rate which is 3% per annum above the Base Rate of the Lloyds TSB Bank Plc calculated from the date of due payment until the date of actual payment after as well as before any judgement and:
  - i** the company shall be entitled to suspend all or any other deliveries to be made under that or any other contract with the purchaser. In such event the purchaser shall not in any respect be released from its obligations to the company under that or any such other contract.
  - ii** Instead of suspension in accordance with paragraph **i** above the company shall be entitled to terminate the relevant contract or any other contract with the purchaser in accordance with condition 15 below and to claim damages from the purchaser for breach of contract.
- c** Where carriage, packing or other charges are stated separately from the price they will nevertheless be payable by the purchaser at the same time as if they formed part of the price and shall be treated as such.

- d** Time of payment is the essence of these terms and conditions.

## 4 DESPATCH AND DELIVERY

- a** Whilst the company will use all reasonable endeavours to keep any stated dispatch or delivery date it accepts no liability whatsoever for any loss or damage resulting from delay howsoever the same shall have been caused.
- b** Unless otherwise agreed in writing, the company shall have the right to deliver some or all of the goods in advance of the specified delivery date(s).
- c** Risk in the goods shall pass to the purchaser when the goods are delivered on to the carrier's ship or aircraft or otherwise delivered on to the carrier's transport in accordance with the contract.
- d** The purchaser shall keep the goods fully insured against all risks normally insured against at least throughout the period between the risk therein passing to the purchaser and the property therein ceasing to remain with the company.
- e** In cases where the company concludes the contract of carriage and/or arranges for the insurance of the goods for transit the company shall be deemed to be acting solely as agent of the purchaser and sub-sections (2) and (3) of section 32 of the Sale of Goods Act 1979 shall not be applicable.
- f** Before dispatching any goods to be delivered elsewhere other than at the company's premises the company will send to the purchaser an Acknowledgement stating the expected date of delivery. If the goods are not delivered or upon delivery are found to be damaged or short the company shall not in any event be liable unless:
  - i** the purchaser gives written notice to the company and to the carrier within four days of the expected date of delivery as stated on the acknowledgement and,
  - ii** in the case of short or damaged delivery the purchaser gives the company or its representatives a reasonable opportunity to inspect the goods concerned in the state, condition and location in which they were delivered.

## 5 PROPERTY

- a** Notwithstanding delivery of the goods or of any documents representing the goods the property in each item of the goods shall remain with the company until receipt by the company of payment in full for such item.
- b** The purchaser shall (unless otherwise agreed by the company in writing) ensure that all goods which are in the possession or control of the purchaser and the property in which remains with the company are, so far as is reasonably practicable, stored separately so that they may be readily identified unless clearly marked as being the property of the company.

## 6 DRAWINGS, etc

- a** Unless otherwise agreed in writing all patterns, tools, jigs and fixtures required in the performance of the contract by the company shall, notwithstanding any charges thereof, be or remain the property of the company.
- b** The copyright in all drawings and instruction manuals prepared by the company shall remain the property of the company. All such drawings and instruction manuals shall be treated as confidential and shall not be copied, reproduced or disclosed to any third party without the prior written consent of the company.

**7 SPECIFICATIONS**

- a** All goods supplied to the purchaser pursuant to a contract against specification agreed in writing by the company and the purchaser will conform to such specifications.
- b** Save as provided in paragraph **a** above, all specifications, descriptions and drawings of goods are approximate only, being intended to serve merely as a guide and accordingly the company shall not be liable for their accuracy.

**8 GENERAL LIABILITIES**

- a** The company hereby warrants that all goods supplied are free from defects in material and workmanship but the company's liability under this warranty shall be limited to making good without charge by repair or, at the discretion of the company, the replacement of any defects which the company is satisfied are defects of material or workmanship in goods which are returned to the company's premises carriage paid immediately the purchaser becomes aware of the defects, and in any event within 90 days after receipt by the purchaser of the goods. The foregoing warranty shall not apply to defects resulting from improper or inadequate maintenance by the purchaser.
- b** The warranty contained in paragraph **a** of this condition is given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied and whether arising by common law statute or otherwise other than relating to title to the goods in particular but without limitation of the foregoing the company shall not be liable for a failure of any of the goods supplied to be fit for any particular purpose for which they are required.
- c** The company shall not be liable for any loss, injury or damage of any nature whatsoever whether direct or consequential arising out of or in connection with any goods supplied unless the same shall have been accepted by the company in writing.
- d** The complete or partial invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions hereof.

**9 DAMAGE TO THE PURCHASER'S PROPERTY**

All materials or equipment owned or furnished by the purchaser shall while in the possession of the company be handled with reasonable care, but the company shall not be responsible for accidental loss thereof or damage thereto.

**10 CANCELLATION**

If the purchaser shall cancel in whole or part any order which has become the subject of a contract the purchaser shall be liable to the company by way of liquidation damages in an amount equal to up to 100%, as determined by the company, of the price of the goods in respect of which the cancellation is made.

**11 QUOTATIONS**

Unless otherwise specified in writing, the terms of all quotations are subject to acceptance within the period specified in the quotation or otherwise agreed between the company and the purchaser and are subject to prior sale by the company of the relevant goods and to withdrawal by the company without notice.

**12 HEALTH AND SAFETY AT WORK**

The purchaser shall be solely responsible for and shall keep the company indemnified against any loss, liability or expense arising directly or indirectly from use of the goods other than in accordance with the company's operating instructions.

**13 FORCE MAJEURE**

The company shall be entitled to cancel or rescind any contract without liability for loss or damage resulting therefrom if the performance of its obligations under the contract is in any way adversely affected by any war, terrorist act, strike, lock-out, sit-in, trade dispute, flood, accident to plant or machinery, shortage of any material or labour or any other cause whatsoever beyond the company's control.

**14 ASSIGNMENT**

The purchaser shall not assign the agreement or any rights hereunder in whole or in part without the prior written consent of the company.

**15 DEFAULT**

- a** The company may, by notice in writing to the purchaser, forthwith terminate any contract in whole or in part if:
  - i** the purchaser shall commit any breach of any of the terms, including without limitation terms concerning the time for payment of the purchase price, of that or any other contract with the company and on its part to be observed or performed provided that if such a breach is remediable the company has previously given to the purchaser notice thereof and the same has not been remedied within seven days thereafter.
  - ii** being an individual the purchaser shall die or have a receiving order made against him or commit any act of bankruptcy or,
  - iii** being a company the purchaser shall call any meeting of its creditors or have a receiver of all or any of its assets appointed or enter into any liquidation.
- b** In the event of any such termination:
  - i** the company shall be entitled to repossess any goods which are in the possession or control of the purchaser and for such purpose to enter into and upon the premises of the purchaser and,
  - ii** the company shall be entitled by notice in writing to the purchaser to declare, and there shall forthwith become, immediately due and payable any amounts outstanding from the purchaser to the company under that or any other contract and all such amounts shall bear interest at the rate which is three per cent per annum above the Base Rate from time to time of the Lloyds TSB Bank Plc calculated from the date of the notice until actual payment.
- c** The provisions of **a** and **b** above and the exercise by the company of its rights thereunder are without prejudice to any other rights of the company.

**16 HEADINGS**

The headings used in these Terms and Conditions are for convenience only and shall not affect the Construction thereof.