

# Tekdata Distribution Limited - Terms and Conditions

## DEFINITIONS

- 1.1 "Company" means Tekdata Distribution Limited.
- 1.2 "Customer" means the customer of the Company.
- 1.3 "Contract" means any contract entered into for the supply by sale or otherwise of Goods by the Company to the Customer.
- 1.4 "Goods" means any Goods forming the subject matter of any Contract including any parts or components there of and any materials incorporated therein and shall include services.

## QUOTATIONS, CONTRACTS AND VARIATIONS

- 2.1 Quotations by the Company may be withdrawn at any time and in any event shall be deemed to have been withdrawn after thirty (30) days from the date of the quotation or other period therein stated unless the Customer's order has previously been accepted in writing by the Company.
- 2.2 These conditions shall be incorporated in all Contracts to the exclusion of any terms or conditions referred to by the Customer and the Customer's order shall be treated as an offer to take the Goods referred to in the order in accordance with these conditions. Acceptance of any delivery or performance by or on behalf of the Customer shall in any event be conclusive evidence of the Customer's acceptance of these conditions.
- 2.3 Each Contract supersedes all previous oral or written communications between the Company and the Customer not expressly referred to in any order acknowledgment given by the Company and no amendment of any Contract shall bind the Company unless in a written confirmation signed by a director of the Company.

## PRICES

- 3.1 The Company's prices exclude VAT and unless otherwise stated are ex works, exclusive of carriage and insurance and are those ruling at the date of despatch (and where in any Contract the price is agreed to be other than the Company's list price applicable in force at the date of despatch, it may be varied, at the Company's discretion, for any increased costs whatsoever incurred by the Company after the date on which it was quoted).
- 3.2 The Company's price lists may be varied or altered at any time.

## PAYMENT

- 4.1 All amounts due to the Company, unless otherwise stated, shall be payable in pounds sterling within thirty (30) days of the date of the Company's invoice without any discount, set-off or other deductions whatsoever.
- 4.2 The time or times of payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company, if the invoice is not paid in full by the due date interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) at the rate of 3 percent over the base rate from time to time quoted by the National Westminster Bank Plc and compounded daily. The Customer shall also pay all legal costs incurred by the Company in recovering any amounts owing from the Customer and any Goods in which title has been retained by the Company. Such costs shall be due for payment immediately on invoice.
- 4.3 Without prejudice to any other of its rights and notwithstanding any other agreement or arrangement with the Customer, the Company shall be entitled by giving written notice to the Customer at any time to require the Customer to tender the price of the Goods in a manner satisfactory to the Company and to refrain from delivering the Goods until the price has been so tendered.
- 4.4 If there occurs any failure by the Customer to make any payment when and as due or other circumstances entitling the Company to terminate the Contract or if the Customer exceeds any financial limit upon the Customer's account (if any) from time to time applied by the Company then in any of such events the price of all such Goods as have been delivered or manufactured for any order of the Customer shall forthwith thereupon become immediately due and payable.
- 4.5 The Company reserves the right to apply amounts received first in settlement of interest of overdue debts and then on debts due, beginning with the oldest.

## DELIVERY, RISK AND PERFORMANCE

- 5.1 Unless otherwise agreed in writing by the Company Goods shall be delivered and risk in them shall pass to the Customer on despatch from the Company's premises or at such other delivery point as the Company has first agreed in writing. Where Goods are made available at a point other than the Company's premises, the Customer shall be responsible for all off-loading and the Company reserves the right to deliver the Goods at the nearest point of suitable access.
- 5.2 Where Goods are consigned to a destination outside the United Kingdom mainland any trade terms referred to in the Company's order acknowledgment shall, to the extent consistent with these conditions, be as defined in the edition of "Incoterms" then current and the Goods shall be delivered and risk in them shall pass to the Customer as therein provided.
- 5.3 Every quotation, tender or acknowledgment of order is based on the information available to the Company at the time it is given and upon such information being sufficient to enable the Company to proceed immediately and without interruption.
- 5.4 All delivery times and dates are subject to the availability of the Goods held in stock.
- 5.5 The Company will endeavour to comply with any date given by it and to advise of any adjustment but shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause whatsoever nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or repudiate the Contract.
- 5.6 If the Customer fails to take delivery of any Goods on the due date or provide adequate delivery instructions the Company may store the Goods at the risk of the Customer who shall pay all storage, transportation, handling or other charges incurred by the Company as a result of such failure and the Company shall be entitled to payment as though delivery had taken place.
- 5.7 The Company may determine the form of and reserves the right to charge for the packing and transport of any Goods where its cost is agreed to be included in the price of the Goods.
- 5.8 No failure by the Company in any one or more instalments shall entitle the customer to repudiate any contract of goods previously delivered or refused to accept any undelivered goods.

## TITLE

- 6.1 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and not pass to the Customer (who shall, nevertheless, subject to the conditions stated below, be entitled to resell them as principal only, in the ordinary course of business) until the Company has received in cash or cleared funds payment in full of the price of the Goods and of all other debts for any other goods or services owed to it by the Customer on any account.
- 6.2 Until title passes:
  - 6.2:1 the Customer shall hold the Goods as bailee for the Company, insure them with a reputable insurer against loss or damage for their full replacement value (and at the Company's request provide evidence as to the existence of and sufficiency of such insurance), ensure that goods are not defaced, destroyed or obscure any unpaid goods and to maintain them in a satisfactory condition, and ensure that they are at all times clearly identified as the Company's property
  - 6.2:2 the Company shall be entitled at any time on demand to
    - 6.2.2:1 repossess, remove from other equipment (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the Customer) the Customer's right to use or sell them, and
    - 6.2.2:2 enter any premises where the Goods are located for the purpose of inspecting or repossessing them.
- 6.3 The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the Customer

6.4 The Company transfers to the customer only such title and rights of use as the Company has in any goods and in the case of material provided by any third party shall transfer only such title and rights as that party had and has transferred to the Company.

#### **LOSS, DAMAGE IN TRANSIT AND INCORRECT GOODS**

7.1 If at the time of delivery any Goods are missing, lost or damaged or the Goods supplied are in correct the Company will at its expense make good the discrepancy within a reasonable period by the replacement of the Goods concerned at the original point of delivery or in its discretion (in the case of damaged Goods) their repair or, at its option, allow credit for the invoice value of any such Goods, subject to these conditions and all other requirements of the Company current from time to time.

7.2 The Company shall have no liability in respect of any such discrepancy unless:

7.2:1 (In case of missing or damaged Goods) written notice is given within seventy-two (72) hours of receipt of the consignment (if any loss or damage could have occurred in transit) within such period and in such manner as will enable the Company to comply with time limits or other requirements imposed by any carrier of which written notice has been given by the Company to the Customer

7.2:2 (in case of loss of a whole consignment) written notice is given to the Company within seven (7) days from the date of invoice, or

7.2:3 (in case of incorrect Goods) written notice is given to the Company within fourteen (14) days of receipt.

#### **WARRANTY**

8.1 If any new Goods cease to be capable of functioning in accordance with their specification by reason of any defect of materials, workmanship or design which appears during the period (if any) stipulated in writing by the Company for the Goods the Company will endeavour to effect at its expense the replacement of the Goods concerned or at its option their repair but if the Company considers the repair of the Goods to be uneconomic or goods of exact equivalence are no longer held in stock by the Company or manufactured by it the Company reserves the right at its discretion to allow credit for the invoice value of defective Goods subject to these conditions and all other requirements of the Company current from time to time.

8.2 The Company shall have no liability in respect of any such defect unless the Customer gives the Company written notice thereof immediately upon the same becoming apparent and in any event within the said warranty period.

8.3 The Company shall have no liability for

8.3:1 any Goods which are used without the Company's prior written approval for a purpose for which they are not designed

8.3:2 any Goods which have been installed, used, maintained, serviced, or stored otherwise than in accordance with the Company's recommendations (or the recommendations of any supplier of any item with which the Goods are used) or have suffered any misuse, neglect or accident

8.3:3 any accessories or proprietary parts or fittings forming part of or supplied in connection with any Goods and if any such item not of the Company's manufacture is alleged

to be defective, the Company's liability shall be limited to assigning to the Customer (so far as it is able to do so) any warranty given by the manufacturer of that item

8.3:4 any Goods in or with regard to which any part not of the Company's manufacture or supply has been used without the Company's prior written approval or the Customer has failed to carry out any modification or improvement recommended by the Company or any defect has arisen from any design provided or approved by or on

8.3:5 behalf of the Customer or because of normal wear and tear

8.3:6 any Goods whose serial number or other identification mark or plate has been removed, defaced or tampered with, or

8.3:7 consumable items including but not limited to tapes, disk packs, ribbons and other accessories any costs (including labour) of removing any Goods forming the subject matter of any claim which has been accepted by the Company under these conditions from any

8.3:8 equipment in which they have been installed or the refitting of any repaired or replacement items, or any faults which appear after the said warranty period applicable to the original Goods has expired and if any Goods are repaired or replaced by the Company within the said warranty period, it shall not thereby be extended and the Customer shall be entitled to further repair replacement, or credit (as the case may be) on any claim subsequently accepted by the Company under these conditions only during the residue of that period.

8.3:9 except as expressly provided in these conditions, the Company accepts no liability, expressly or impliedly, for the quality or suitability of the Goods for any particular purpose or use under specific conditions (whether or not known to the Company.)

#### **CLAIMS**

9.1 The Company shall have no liability in respect of any claim by the Customer unless

9.1:1 the Customer has afforded the Company reasonable opportunity and facilities for the investigation of any claim and the making good of any discrepancy or defect and complied with any request by the Company for written report of the alleged defect, any photographic or other evidence and, if the Company so requests, the return, properly packed and carriage paid, of any Goods in their original outer packing (and the Company reserves the right to reject the claim or at its option to make a 15% restocking charge (or £25 or other amount from time to time specified by the Company if greater) if the Goods are not so packed for examination or rectification by the Company, and

9.1:2 prior to returning any Goods, the Customer has contacted the Company's quality department to give details of the Goods and the reason for their proposed return and obtained a returns number, which must be quoted in all correspondence with the Company (and must not be written on the outer packing of the Goods)

9.1:3 the Customer has paid the full amount of all invoices due prior to the date of the claim any items replaced by the Company following its acceptance of any claim shall become the Company's property and shall not be used or disposed of except in accordance with the Company's instructions.

#### **EXTENT OF LIABILITY**

10.1 The Company shall have no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with the Contract other than for death or personal injury resulting from its negligence or for fraud on the part of any of its employees whilst acting in the course of their employment.

10.2 The Company shall be discharged of all liability to which these conditions apply unless proceedings are begun within twelve (12) months after the Customer became aware (or should reasonably have become aware) of the facts giving rise to such liability.

10.3 The Company's liability in connection with the Goods shall in no circumstances exceed the price payable for them or such lower figure as the Company has stipulated in writing.

10.4 Where the Company is liable under these conditions in respect of some only of the Goods the Contract shall remain in full force and effect in respect of the remaining Goods supplied or to be supplied and the Customer shall not reject or refuse to pay for them.

#### **FORCE MAJEURE**

11 The Company shall not be liable for any delay or other failure to perform the whole or any part of the Contract resulting from any cause whatsoever beyond the Company's control existing at the date of any quotation given by it or arising thereafter including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, supply of labour, materials, power or supplies, strike, lockout or labour dispute (whether or not at the Company's works) illness, epidemic, flood, drought, war, civil commotion, or restriction of any authority or governmental agency (including restrictions or delays in the issue of export or other licences) and the time for performance shall be extended by the period of any such delay.

## **TERMINATION OR SUSPENSION**

12.1 If the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, has a receiver, manager, administrator, administrative receiver or trustee in bankruptcy (as the case may be) appointed for all or any part of its assets, is the subject of any bankruptcy order, has a resolution passed for its winding up, has a petition presented to any court for an administrative order or for its winding up, enters into any composition or arrangement with its creditors (whether formal or informal), has any distraint or execution levied on any of its assets, ceases to trade or suffers in consequence of debt any action similar to any of the foregoing under the laws of any jurisdiction or the Company bona fide believes that any of the foregoing matters may occur, then, in any such event, the Company shall, without prejudice to any other remedy, be entitled, at its discretion, by giving the Customer written notice at any time, to forthwith suspend its performance of or terminate such Contract without liability to the Customer.

12.2 The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of the same or any subsequent breach.

## **GENERAL**

13.1 The acceptance of any cancellation of the Contract requested by the Customer shall be at the Company's discretion and take effect only when written confirmation of such acceptance has been given by the Company which reserves the right to charge for any costs or expenses (including manufacturing, administration and handling expenses) or loss of profits which it incurs in connection with any such cancellation of the Contract.

13.2 Any specifications, drawings, particulars of weights and dimensions and other technical information contained in the Company's quotations, catalogues, price lists, advertisements or elsewhere are approximate only and intended merely to present a general idea of the Goods and (unless otherwise agreed in a written document signed by a director of the Company) are not to form part of the Contract.

13.3 The Company reserves the right to discontinue the sale of particular Goods or parts or to alter their designs and specifications without notice, and to deliver Goods conforming to the altered design or specification in fulfilment of any Contract. No Contract shall constitute a sale by sample notwithstanding that any items may have been exhibited to or inspected by the Customer.

13.4 The Company shall have no liability for any advice, opinion or information furnished by the Company, its servants or agents unless given in writing in response to a written request by the Customer referring to the Contract.

13.5 All drawings, designs or other data (whether or not patentable or patented) and all rights therein (including copyright and design rights) and all materials, tools, patterns or other items prepared or made available by the Company for the Contract shall, unless otherwise agreed by the Company, be and remain the Company's property and the Customer shall not copy or reproduce the same in whole or in part in any form (except in case of software for its own security back-up) or allow others to do so.

13.6 The Customer shall indemnify and hold harmless the Company against any and all claims, proceedings, costs, damages, liabilities and expenses incurred or suffered by the Company arising from any instructions, data, drawings, specifications, tooling, equipment, goods, services or other items supplied by or on behalf of the Customer to the Company or from any failure to supply the same, or from any infringement or alleged infringement of the rights of any third party claimed under or in relation to any patent, registered design, trademark, copyright, design right, breach of confidence or otherwise howsoever resulting from the Company's use of any of the foregoing items.

13.7 The Company shall have no liability for any damage to or loss of any property of the Customer whilst on the premises or under the control of the Company unless occasioned by wilful misconduct on the part of the Company or its employees.

13.8 The Company may at its discretion sub-contract all or any of its obligations under the Contract but the Contract shall not be assigned by the Customer without the Company's prior written consent.

13.9 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.10 The Company shall have a lien on any Goods in the Company's possession for all sums due at any time from the Customer on any account and shall be entitled to keep possession of or at its option sell or dispose of the same as agent for and at the expense of the Customer and apply any proceeds in and towards the payment of such sums on 28 days written notice to the Customer.

13.11 The Customer shall treat the Contract and all information which it acquires thereunder as confidential.

13.12 If the Customer proposes to export any Goods it shall disclose to the Company in writing the proposed destination at the time of making the enquiry, specification or order. If the Customer fails to disclose this information to the Company, then any contract between the Company and the Customer relating to the Goods for export shall be voidable at the option of the Company, notwithstanding that any act or thing may have been done by the Company in performance or part-performance of such Contract. In the event of such failure, the Customer shall indemnify and keep indemnified the Company against all costs, claims, expenses or damages arising out of the export or attempted export of the Goods in question.

13.13 Where any inspections or tests to be conducted at the Company's premises and the Customer fails to attend upon reasonable notice of up to fourteen (14) days the Company shall be entitled to proceed in the Customer's absence and the Customer shall be deemed to have accepted the results of such inspection or tests. Where any service including attendance are undertaken by the Company on the Customer's premises the Customer shall at its expenses provide such facilities, services and equipment and do all things as the Company requires for the performance of its services and ensure the same are safe and suitable to enable such services to

13.14 Customer authorises the Company to carry out checks (including enquiries relating to directors and other individuals) with credit reference agencies who may keep a record of that search and to make available to such agencies information relating to the conduct of the Customer's account and the Customer acknowledges that the agencies concerned may share the information supplied to them with other businesses in assessing applications for credit and/or fraud prevention.

## **LAW, JURISDICTION AND CONSTRUCTION**

14.1 The Contract shall be governed by English law and the parties consent to the jurisdiction of the English courts in all matters connected with the Contract.

14.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.

## **NOTICES**

15 Any notice to be given under the Contract shall be in writing and if sent by facsimile or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in writing to the other party shall be deemed to have been given on the date of the facsimile (if receipt is confirmed in writing) or 2 working days (or 7 working days in the case of Customers outside the United Kingdom) following the date of posting.