

Standard Conditions of Sale

1. Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Customer' means the party named as the Customer in the Order Acknowledgement and/or Invoice;
- 1.2 'Company' means Oracle Drive Systems Limited of Batley West Yorkshire. WF17 6ER Registered No 04974921;
- 1.3 'Conditions' means these standard conditions of sale and any special conditions agreed in writing by the Company;
- 1.4 'Contract' means the agreed Contract between the Company and the Customer for the supply of Products and/or Services;
- 1.5 'Goods' means the Products and/or Services as listed in the Order Acknowledgement and/or Invoice;
- 1.6 'Software' means programmes incorporated within certain Goods for them to become operational.
- 1.7 'Order Acknowledgement' means the Company's Order Acknowledgement and/or Invoice;
- 1.8 'Writing' means letter, facsimile, e-mail or any other similar text recorded communication.

2. Contract Conditions

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Company to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Conditions.
- 2.3 No order made by the Customer shall be deemed accepted by the Company until the Company has sent its Order Acknowledgement and/or Invoice to the Customer.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.
- 2.5 Any Engineering Services provided by the Company will be subject to Contract, these Conditions and the Company's Engineering Services Standard Terms and Conditions. A copy of these terms and conditions is available on request.
- 2.6 Order cancellation can only be accepted with the written consent of the Company and would be subject to appropriate cancellation charges including loss of profit.
- 2.7 Any errors or omissions in sales literature, quotations, price lists, Order Acknowledgement, Invoices or Contract documentation would be subject to correction without liability to the Company.

3. Documentation & Specifications

- 3.1 The Company's quotation may include drawings, designs, specifications, weights and measures in relation to the offered Goods. These will remain the property of the Company and are only intended as a general description of the Goods. They must not be regarded as design specifications, representations or warranty.
- 3.2 The Customer shall ensure the accuracy of their Order and provide all necessary information and free issue items within the time scale specified by the Company to enable the Company to deliver the Goods on the agreed Delivery Date.
- 3.3 The Company shall have no liability for any defect in the Goods where such defect is the result of inaccurate or inadequate instructions from the Customer.
- 3.4 The Company's continuous improvement policy reserves the right to change the specification of the Goods to maintain or improve quality and/or performance.

4. Prices and Payments

- 4.1 The Price of Goods shall be the ex works Price as set out in the Company's Order Acknowledgement and/or Invoice. The Prices are exclusive of any other tariff or VAT which shall be due at the rate ruling on the date of the Company's Invoice. The Prices are exclusive of Carriage, Packing and associated Insurance charges
- 4.2 The Prices may be altered at the Company's discretion to take account of any changes in the scope of supply requested by the Customer. Any Price variation shall be notified to the Customer in writing.
- 4.3 Subject to the Company's acceptance of the Customer's current credit rating, full payment shall be received by the Company in the Invoiced currency for all Invoiced items within 30 days of the Invoice date
- 4.4 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - 4.4.1 Suspend further deliveries under the Contract;
 - 4.4.2 Withdraw credit terms and substitute advance payment terms;
 - 4.4.3 Charge interest on overdue payments at the rate of 4% above the current base rate from the due date until the payment date.

5. Delivery of the Goods

- 5.1 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 5.2 The Company shall not be liable to the Customer for late delivery or short delivery of Goods
- 5.3 The Customer shall carry out a thorough inspection of Goods delivered by the Company. The Customer must give written notice to the Company within 14 days of the Delivery Date of any apparent loss or damage to the Goods. In the absence of such notification, the Goods shall be deemed to be in accordance with the Contract.
- 5.4 Loss or damage to Goods collected by the Customer will be the Customer's responsibility.
- 5.5 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.
- 5.6 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instruction at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of the storage;
Sell the goods at the best market price and (after deducting all reasonable storage and selling expenses) credit the Customer for any excess over the Contract Price or charge the Customer for any shortfall below the Contract Price.

6. Warranties and Liabilities

- 6.1 The Customer must provide the Company with prompt written particulars of any defect in the Goods during the 12 months Warranty period. They must also provide the Company with any additional requested information and/or access to the Goods to enable the Company to complete its Warranty obligations. Goods cannot be accepted for replacement or repair until the Customer has received written authorization from the Company.
- 6.2 In the event that new Goods supplied by the Company prove defective under proper use within 12 months following delivery and the defect is due to faulty workmanship, faulty design or materials then the defective parts should be returned carriage paid to the Company. Subject to these Warranty conditions the Company will replace or repair the defective parts at their expense. Warranty replacement and/or repairs on site would be at the Company's discretion and would be subject to hotel and/or travel expenses together with engineering charges not associated with a Warranty repair.
- 6.3 The Company does not give any warranty, guarantee or other terms as to their quality, fitness or purpose or otherwise of any Goods not of the Company's manufacture supplied under this Contract, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the party supplying the Goods to the Company.
- 6.4 The Company accepts no liability:
- 6.4.1 For defects caused by third party designs or installations;
- 6.4.2 For defects caused by repairs and/or modifications not authorised in writing by the Company;
- 6.4.3 For defects caused by the Goods not been stored, mounted, operated or maintained as specified by the Company;
- 6.4.4 For defects caused by connection of the Goods to unsuitable equipment;
- 6.4.5 For defects caused by willful damage, negligence and/or non-compliance with applicable legislation;
- 6.4.6 For any defects where the Customer has failed to comply with the terms of payment for the Goods;
- 6.4.7 For defects caused outside the 12 month Warranty period.
- 6.4.8 For defects however caused to second hand Goods supplied by the Company and accepted by the Customer.
- 6.5 The Customer and Company will not be in breach of Contract for reasons of 'Force Majeure' meaning circumstances outside the control of either party. Contract payment terms will still apply but without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 6.5.1 Act of god/explosion/flood/ tempest/fire/accident/war or threat of war/sabotage, / insurrection/civil disturbance or requisition;
- 6.5.2 Acts/restrictions/regulation/ bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 6.5.3 Import or export regulations or embargoes;
- 6.5.4 Strikes, lock-outs or other industrial actions or trade disputes;
- 6.5.5 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 6.5.6 Power failure or breakdown in machinery.

7. Exclusions

- 7.1 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer.
- 7.2 Save as provided in these Conditions, all representations, warranties or conditions whether expressed, implied or statutory, are excluded to the fullest extent permitted by law.

8. Copyright

- 8.1 Company documentation supplied to the Customer shall remain the property of the Company and shall not be copied, used or disclosed to other parties without the Company's written approval.

9. Software

- 9.1 Software and associate documentation supplied by the Company is protected by U.K. and International legislation. Applicable Software licences paid for by the Customer will be subject to the Customer's compliance with the terms and conditions of the licence agreement and the number of licences required.
- 9.2 The Company reserves the right to terminate the licence agreement should the Customer be in breach of such.

10. Title and risk

- 10.1 Risk of damage to or loss of the Goods shall pass to the Customer on delivery
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the Price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.

11. Retention of Title

- 11.1 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods (at no cost to the Company) separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 11.2 Until such time as the property in the Goods passes to the Customer the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are located and repossess the Goods.
- 11.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 11.4 If, before they are paid for in full any of the Goods undergo processing and/or are mixed with any other materials the Goods shall be and will remain the property of the Company and the Customer will hold the Goods (stored according to Clause 11.1 above so far as possible) and any amount arising from any sale of the Goods on behalf of the Company.
- 11.5 Proceeds of any sale will be held on trust by the Customer and applied in paying to the Company the Price of the Goods on demand or at the due time for payment whichever is the earliest and the balance, if any, will belong to the Customer.
- 11.6 In addition, the Company shall be entitled to make a claim directly against any firm or company to whom the Customer has agreed to sell any of the Goods for any monies unpaid by such firm or company provided that the Company shall return to the Customer any monies recovered in excess of the amount then owed by the Customer to the Company, together with costs and expenses involved in making such a claim.

12. Default of the Customer

- 12.1 All sums outstanding in respect of the Goods shall become immediately payable if:
 - 12.1.1 The Customer fails to make payment for the Goods in accordance with these Conditions; or
 - 12.1.2 Commits any other breach of these Conditions; or
 - 12.1.3 The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 12.1.4 An encumbrancer takes possession, or a receiver, administrator, administrative receiver or manager is appointed, over the whole or any part of the property or assets of the Customer; or
 - 12.1.5 The Customer ceases, or threatens to cease, to carry on business; or
 - 12.1.6 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 12.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - 12.2.1 Cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer; and
 - 12.2.2 exercise any of its rights pursuant to clause 11 of these Conditions.

13. Export

- 13.1 Where Goods are supplied for export from the U.K. the Customer will take full responsibility for: -
- 13.1.1 Payment for the Goods on receipt of the Company's Order Acknowledgement and/or Invoice.
- 13.1.2 Loss or damage to the Goods subject to Contract
- 13.1.3 Specification compliance of the Goods in respect of the Export destination.
- 13.1.4 Compliance with Import, Export and shipment regulations and payment of all associate duties

14. Intellectual Property

- 14.1 The specifications and designs of the Good (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Company. Where any designs or specifications have been supplied by the Customer for manufacture by the Company or to the order of the Customer then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party and the Customer shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement.

15. Miscellaneous

- 15.1 The Contract is between the Company and the Customer as principles and shall not be assignable by the Customer without the express written consent of the Company.
- 15.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 15.3 No waiver by the Company of any breach of these Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 15.5 All contracts shall be governed by the laws of England and be subject to the exclusive Jurisdiction of the Courts of England and Wales.