

Terms and conditions of sale

1. GENERAL

- 1.1 In these Conditions:
1.1.1 the following expressions shall have the following meanings:
"Buyer" The individual or Seller or other party from whom an Order to Supply Goods and/or provide Services is received by the Seller.
"Contract" a contract for the Supply of Goods and/or provision of services by the Seller to the Buyer whether made verbally or in Writing.
"Date of Delivery" the date on which delivery of the Goods or Services takes place pursuant to Condition 6.
"Goods" the goods, articles or items which the Seller is to supply under the Contract
"Order" an order placed by the Buyer for the Supply of Goods and/ or provision of Services whether verbally or in Writing.
"Seller" Kinley Systems Limited or the handling division, subsidiary or holding Seller or associate of the Seller as notified to the Buyer in writing.
"Writing" includes facsimile transmission, electronic mail and other comparable means of communication.

2. ORDERS, ACKNOWLEDGEMENTS, CONDITIONS AND VARIATIONS

- 2.1 Notwithstanding that the Seller may have given a detailed quotation or estimate either verbally or in Writing, no Order shall be binding on the Seller unless and until it has been acknowledged in Writing by the Seller.
2.2 These Conditions are incorporated in the Contract and contain the entire obligations between the Seller and the Buyer. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any Order, letter or form on contact sent by the Buyer to the Seller, whatever may be their respective dates, the provisions of these Conditions shall prevail.
2.3 These Conditions apply to all the Seller's sales and any variation of these Conditions and any representations about the goods and the Services shall have no effect unless expressly agreed in Writing by the Seller.

3. DESCRIPTION

- 3.1 The description of the Goods and/or Services shall be set out in the Seller's quotation.
3.2 Any figures, statements, descriptions, illustrations, photographs, drawings, weights or any other matters contained in the Seller's catalogues, pamphlets, price lists or advertising literature are not guaranteed to be accurate and are intended merely to represent a general picture of the Seller's products and services and shall not form part of the Contract nor be regarded as a warranty or representation relating to the Goods.
3.3 If the Buyer wishes to order the goods in accordance with a particular grade or specification this should be stated in the Buyer's order and any accompanying drawings, but in any event the Seller reserves the right at any time without notice to the Buyer to change or modify the particulars of any specifications of any goods or materials used in their manufacture.

4. DESIGNS, BUYER'S PROPERTY AND INTELLECTUAL PROPERTY

- 4.1 No right of ownership or interest in the Seller's patents, registered designs, trademarks, copyrights or any other intellectual property owned by the Seller shall pass in any way to the Buyer in relation to the Goods or Services provided under these Conditions.
4.2 Where Goods are made or supplied to the Buyer's own specification, pattern or design or where standard goods of the Seller are altered in accordance to the Buyer's instructions:
4.2.1 the Buyer warrants and undertakes full responsibility not only for the suitability and fitness of the specification, pattern or design but also that such specification, pattern or design does not infringe any patent, trademark, registered design, copyright or any other proprietary right of any third party and the Buyer shall indemnify and keep the Seller indemnified in full against any loss, damage or expense whatsoever (including costs) which the Seller may incur in or arising from the performance of the Contract by reason of any infringement of any such patent, trade mark, registered design, copyright or any other proprietary right and the Buyer acknowledges that the Seller shall be under no liability of any description to the Buyer if the Goods prove to be unsuitable for whatever reason for application or use.
4.3 To the extent that the Seller has agreed in writing to make patterns especially for the Buyer the same shall become the property of the Buyer when paid in full. Any replacements or alteration or repairs to any Buyer's patterns or equipment shall be paid for by the Buyer.
4.4 The Seller shall have no responsibility for any loss of or damage to any patterns, equipment or other items of the Buyer's property whilst on the Seller's premises arising from inadequate storage or any unauthorised, injurious act or default by any employee of the Seller or otherwise and the Buyer must arrange its own insurance at all times for such equipment.
4.5 The Seller shall have a general lien on the entire Buyer's property in the Seller's possession for all sums due at any time from the Buyer and shall be entitled to retain possession of, use, sell or dispose of such property as agent for and of the expense of the Buyer and apply the proceeds in and towards the payment of such sums on 28 days' notice in writing to the Buyer. On accounting to the Buyer for any balance remaining after payment of any sums due to the Seller and the costs of sale or disposal, the Seller shall be discharged of any liability whatsoever in respect of the customer's property.

5. QUOTATIONS AND PRICE

- 5.1 The Seller's quotations shall be valid for 60 days from the date of quotation and are provisional in so far as they are subject to alteration by reference to any changes in the price of raw materials, any item to be acquired by the Seller from a third party rates of wages, other costs of production and any other circumstances beyond the Seller's control taking place between the date of the quotation and the Buyer's placing of any Order in respect thereof.
5.2 The Seller shall be entitled to adjust the Contract price of the Goods and/or Services whether before or after the making of the Contract in the event of any variation in the cost to the Seller of supplying the same or any part thereof caused by:
5.2.1 any increase in the cost of materials or services required by the Seller for the completion of the Contract or,

- 5.2.1 any increase in wages or production and manufacturing costs or other overheads or any other reason whatsoever beyond the control of the Seller including (but without prejudice to the generality of the foregoing) fluctuations in exchange rates between monetary currencies, the action of any government or any other authority or any labour problems.
5.3 Unless otherwise stated, the price set out in the Seller's quotation shall be exclusive of any value added tax, insurance, packaging, cost of carriage to the contracted place of delivery cost of off-loading and installation of the Goods (which for the avoidance of doubt shall be at the Buyer's sole risk and expense).
5.4 Samples submitted to the Buyer will be payable by the Buyer unless returned to the Seller, carriage paid, within 1 month from the date of dispatch. In instances where the Seller is working from a new pattern, an altered pattern, or a pattern fresh to the Seller's works, the Seller may submit sample castings for approval before manufacturing the majority of the Order which will only be commenced on receipt of such approval in writing.

6. DELIVERY

- 6.1 Delivery of Goods shall be deemed to be effected by the Seller, where Goods are delivered by the Seller, when the same arrive prior to unloading at the Buyer's premises or at premises nominated by the Buyer or at the nearest accessible road point to such premises, where Goods are delivered by an independent carrier, at the time of loading onto the carrier's vehicle, where goods are collected by or on behalf of the Buyer by its servants or agents, when the same are collected or in the case of Services shall be deemed to be delivered to the time of completion by the Seller of the Services.
6.2 Whilst the Seller will make every reasonable effort to complete the Contract by the date or dates specified for delivery of Goods and/or provision of Services such date or dates shall only constitute the times by which the Seller expects to effect such delivery and if no time is agreed delivery end/or provision will be within a reasonable time but the time for performance of the Contract by the Seller shall not be of the essence of the Contract the Seller's failure to so deliver and/or provide by the due date or dates should not constitute a breach of Contract and the Seller shall not in any circumstances be responsible for any direct or consequential loss or damage of any kind whatsoever resulting from such breach.
6.3 Neither of the parties shall be responsible to the other for any delay in performance or non-performance due to any causes beyond the reasonable control of the parties, but the affected party shall promptly upon the occurrence of any such cause so inform the other party in Writing, stating that such cause has delayed or prevented its performance under the Contract and thereafter such party shall take all action within its power to comply with the terms of the Contract as fully and promptly as possible.

7. QUANTITIES AND INSTALMENTS

- 7.1 Where Goods are delivered and/or Services are provided by installments each installment shall be deemed to be sold under a separate Contract and the party in default in respect of any installment shall be liable accordingly, but no default in respect of any one installment shall affect due performance of the Contract as regards other installments.
7.2 If Goods and/or Services are to be delivered in installments the Seller shall be entitled to invoice each installment as and when delivery and/or provision is made and payment for all delivered and/or Services provided by installments shall be due notwithstanding non-delivery and/or non-provision of other installments or other default by the Seller. Failure by the Buyer to make payment by the due date for any one installment for whatever reason shall entitle the Seller to suspend deliveries of the Goods and/ or provision of Services under the Contract but without prejudice to any to her right the Buyer may have under any of the other provision of these Conditions.

8. SUSPENSION AND CANCELLATION

- 8.1 If the Buyer requires cancellation of the Contract this will only be accepted at the sole discretion of the Seller and unless otherwise agreed in Writing only upon condition that any costs, charges or expenses (both direct and consequential) incurred by the Seller up to the date of cancellation end the value of all loss or damage (both direct and consequential) incurred by the Seller by reason of such cancellation will be reimbursed by the Buyer to the Seller forthwith. Acceptance by the Seller of any cancellation by the Buyer will only be binding upon the Seller if this is made in writing.
8.2 The Seller shall suspend the performance of the Contract on receipt of a request in Writing from the Buyer but shall only do so for a period not exceeding 28 days and the Buyer shall reimburse the Seller for all storage charges and other additional costs the Seller incurs thereby and such costs shall be added to and form part of the price for the Goods. If such suspension shall continue for a period of more than 28 days then the Seller may terminate the Contract and the rights and liabilities of the parties shall be the same as if the Contract had been cancelled in accordance with the provisions of Condition 8.1.

9. TERMS OF PAYMENT

- 9.1 PAYMENT OF THE PRICE OF THE GOODS AND/OR SERVICES IS DUE 30 DAYS FROM THE DATE ON WHICH THE GOODS AND/OR SERVICES WERE DELIVERED OR DEEMED TO BE DELIVERED AND THE TIME FOR PAYMENT SHALL BE OF THE ESSENCE.
9.2 No payments shall be deemed to have been received until the Seller has received cleared funds. All payments payable to the Seller under the Contract shall become due immediately on termination of this Contract despite any other provisions.
9.3 The Buyer shall not be entitled to withhold payment of any amount due to the Seller by reason of any disputed claim by the Buyer in connection with the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any amount which is not then due and payable by the Seller or for which the Seller disputes liability.
9.4 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the monthly rate of 6% above the base lending rate of Lloyds Bank Plc accruing on a daily basis until payment is made, whether before or after any judgment.

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10. INSTALLATION AND/OR PROVISION OF SERVICES

- 10.1 When the Contract provides for actual installation by the Seller and/or provision of Services, the Seller will supply all necessary personnel and tools for the installation of the Goods and/or the provision of Services according to the details specified in its quotation.
- 10.2 Where installation services or Services are to be provided under Condition 10.1, unless otherwise agreed the Buyer will be responsible for:
- 10.2.1 all necessary preparation of the site including all work to buildings, foundations, supporting structures and fixing points.
- 10.2.2 the proper unloading, safe-keeping and insurance of the goods from the time of delivery.
- 10.2.3 the provision of scaffolding, lifting and any other equipment (excluding tools) and all services required to install or operate the Goods or provide the Services.
- 10.2.4 any work whether preparatory to installation or provision of the Services or in the installation or provision itself not specifically included in the Seller's quotation and
- 10.2.5 giving the Seller access to and possession of the site at such time and in such state as may enable it to complete the installation or provision of the Services within any agreed time limit.
- 10.3 If the Buyer fails to provide all or any of the items referred to in Condition 10.2 when the Seller reasonably requires them or to its reasonable satisfaction, then having given the Buyer a reasonable opportunity to remedy such failure the Seller may at its discretion and as its sole option arrange for the provision of such item or items as it may require and such expenses as may be incurred in providing such item or items shall be payable by the Buyer on demand.
- 10.4 The Buyer warrants:
- 10.4.1 that where the Goods are to be installed and/or the Services are to be performed or at the premises of any third party it has full and proper authority for the Seller to enter the premises of that third party to install the goods and/or perform the Services and undertakes with the Seller to inform it forthwith in the event of any suspension or termination of that authority.
- 10.4.2 that it has taken all reasonable precautions to procure that all areas on which the Seller is performing the Services are safe and without risk to health.
- 10.4.3 that it has made such enquiries as are reasonable to ensure that all areas on which the Seller is performing the Services are free from latent defects and agrees to fully indemnify the Seller against all and any claims which arise from any subsequent discovery of a latent defect on such area.

11. ADDITIONAL GOODS/SERVICES

- 11.1 Where the Buyer requires Goods and/or Services to be provided in addition to those set out in the Contract as a part of the Contract, the Buyer shall place an order in Writing therefore and upon acceptance in Writing by the Seller of such Order the provision of these Conditions shall apply to those additional Goods and/or Services.

12. WARRANTY

- 12.1 The Seller shall make good by replacement or, at its option repair any failure (fair wear and tear excepted) in the Goods and/or services which under conditions of proper use and maintenance, results from defects in the Seller's manufacture, design, materials or workmanship and which appears not later than 12 months after the Date of Delivery or after the date on which the provision of the Services is completed.
- 12.2 Notwithstanding the provisions of Condition 12.1, in the case of a claim falling within Condition 12.1, the Seller reserves the right at its sole discretion to credit the Buyer in full the prices paid by the Buyer to the Seller.
- 12.3 The Seller's liability under this Condition shall automatically cease if:
- 12.3.1 the Buyer shall not have paid for all Goods supplied and/or Services provided under any Contract by the due date or is otherwise in breach of this or any contract made with the Seller;
- 12.3.2 The Seller or its servants or agents are denied full and free right of access to the allegedly defective Goods and/or Services or the Buyer has not properly maintained the Goods;
- 12.3.3 the defect or failure is caused by willful damage, dirt, neglect, mis-use, accident or abnormal working conditions or continued use after a defect has become apparent or
- 12.3.4 the defect or failure is caused by wear and tear or
- 12.3.5 the Buyer has failed to notify the Seller in Writing of any defect or suspected defect within 30 days of the same coming to the knowledge of the Buyer.
- 12.3.6 if such defect or failure arises as a result of any inaccurate or incomplete information or details supplied by the Buyer or in any defect or inaccuracy in any patterns, equipment or other property of the Buyer.
- 12.4 THE WARRANTY SET OUT IN CONDITION 12.1 SHALL BE IN LIEU OF ANY WARRANTIES, CONDITIONS OR UNDERTAKINGS WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE HOWSOEVER WHICH WARRANTIES, CONDITIONS AND UNDERTAKINGS ARE HEREBY EXPRESSLY EXCLUDED, EXCEPT THAT SUCH EXCLUSIONS WILL NOT APPLY TO:
- 12.4.1 WHEN THE BUYER DEALS AS A CONSUMER (AS DEFINED IN SECTION 12 UNFAIR CONTRACT TERMS ACT 1977), ANY IMPLIED TERM RELATING TO THE CONFORMITY OF THE GOODS WITH THEIR DESCRIPTION OR SAMPLE OR AS TO THEIR QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 12.5 THE SELLER'S RESPONSIBILITY IS LIMITED TO THE TERMS OF THE FOREGOING PROVISIONS OF THIS CONDITION AND (EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF THE SELLER, ITS SERVANTS OR AGENTS) THE SELLER SHALL NOT BE LIABLE FOR ANY CLAIM FOR DIRECT OR INDIRECT CONSEQUENTIAL OR INCIDENTAL LOSS, INJURY OR DAMAGE WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT) MADE BY THE BUYER OR ANY THIRD PARTY AGAINST THE SELLER ARISING OUT OF OR IN CONNECTION WITH ANY DEFECT IN THE GOODS AND/OR SERVICES WHETHER OR NOT SUCH DEFECT IS DIRECTLY OR INDIRECTLY WHOLLY OR IN PART CAUSED BY THE ACT, OMISSION, DEFAULT OR NEGLIGENCE OF THE SELLER ITS SERVANTS OR AGENTS AND WHETHER OR NOT SUCH DEFECT AMOUNTS TO A BREACH OF A FUNDAMENTAL TERM OR A PRIMARY OBLIGATION OF THE CONTRACT OR A FUNDAMENTAL BREACH THEREOF

13. GOODS AND MATERIALS MANUFACTURED BY THIRD PARTIES

- 13.1 Where the Goods which are subject of the Contract are not manufactured by the Seller and are delivered direct to the Buyer or collected by or on behalf of the Buyer from the manufacturer or other third party, the Seller shall not be liable for any loss or damage to such Goods whatsoever or whensoever occurring.

14. TITLE TO GOODS

- 14.1 Until payment in full of all monies due and owing by the Buyer to the Seller on any account whatsoever has been received full legal and beneficial ownership of the Goods shall be retained by the Seller notwithstanding that the risk in the same shall pass to the Buyer at the time of delivery.
- 14.2 Until payment in full of all monies due and owing by the Buyer to the Seller on any account whatsoever has been made the Buyer shall hold the Goods supplied in a fiduciary capacity and as bailee of the Seller and shall at all times take proper care of the same and will not obliterate any identifying mark on the Goods or their packaging and will keep the Goods separate from any other goods and in such manner that they may be clearly identified as belonging to the Seller.
- 14.3 Subject to Conditions 14.4 and 14.5 the Buyer shall be at liberty to sell the Goods supplied in trust to pay to the Seller such sums to which it is entitled under the provisions of the Contract provided that the sums due to the Seller shall be kept separate from any monies of the Buyer and/or any third party. Notwithstanding the provisions of this Condition 14.3, the Buyer may retain from the proceeds of such sale any sum in excess of the sum or sums to which the Seller is entitled under the contract or any other Contract between the Seller and the Buyer.
- 14.4 The Seller may at any time revoke the Buyer's conditional power of sale contained in Condition 14.3 by giving 24 hours' prior notice in the event of the Buyer being in default for longer than 14 days in the payment of such sum whatsoever due to the Seller from the Buyer (whether in respect of the Goods and/or Services which are the subject of the Contract or in respect of any other Contract between the Seller and the Buyer) or if the Seller has bona fide doubts as to the solvency of the Buyer.
- 14.5 The Buyer's conditional power of sale contained in Condition 14.3 shall automatically cease if:
- 14.5.1 a receiver or administrative receiver is appointed over the whole or any part of the assets or the undertaking of the Buyer or a winding up order is made against the Buyer or the Buyer goes into voluntary liquidation (except solely for the purpose of reconstruction or amalgamation) or calls a meeting or makes any arrangement with its creditors or becomes subject to an administration order or commits any act of bankruptcy or
- 14.5.2 the Buyer pledges or in any way charges by way of security for indebtedness the whole or any part of the Goods.
- 14.6 Should the Contract require the installation of the Goods at or in the premises of any third party, the Buyer shall notify the third party before installation begins of the terms of this Condition 14 and obtain the acknowledgement in Writing of the third party (sending a copy thereof to the Seller) that the third party has noted the terms of this Condition 14 and concedes the rights of the Seller under it as if the Contract was made by the third party directly with the Seller.
- 14.7 The Seller will have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.

15. RISK AND INSURANCE

- 15.1 The risk in the Goods and Services shall pass to the Buyer at the time of delivery as provided for in Condition 6.
- 15.2 Notwithstanding the reservation of title contained in Condition 14, the Buyer shall insure the Goods and/or any products made wholly or partly therefrom and/or on areas on which the Services are being rendered for the full amount of the price payable under the Contract with an insurance office of repute from the time of delivery of the Goods until the date title in the Goods passes to the Buyer pursuant to Condition 14.1 or practical completion of the Services has taken place and procure that the interest of the Seller as the owner of the goods and/or performer of the Services is noted on the policy of such insurance and produce such policy to the Seller for inspection on demand

16. HEALTH AND SAFETY AT WORK (ETC.) ACT 1974

- 16.1 The attention of the Buyer is drawn to the provisions of section 6 Health and Safety at Work (Etc.) Act 1974. The Seller will make available upon request information on the design, construction and installation of its products to ensure that, as far as is reasonably practicable, they are safe and without risk to health. It is the responsibility of the buyer to take such steps as are necessary to ensure that such information relevant to the Goods which is appropriate is made available to its servants, agents or any person to whom the Buyer supplies them and to any other person to whom the Buyer reasonably considers any such information should be given.

17. FORCE MAJURE

- 17.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, floods, epidemic, radioactivity, lock-outs, strikes or other labour disputes, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

18. GENERAL

- 18.1 If at any time any one or more of the provisions, or part thereof, these Conditions becomes or is invalid, illegal or unenforceable in any respect under any law or is held by a court to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 18.2 These Conditions and each and every Contract made pursuant to them shall be governed by and construed in all respects in accordance with the laws of England and the Seller and the Buyer hereby agree to submit to the non-exclusive jurisdiction of the English Courts.
- 18.3 Any notice required or permitted to be given by either party of the other under these Conditions shall be in Writing addressed to that other party or its registered office or principal 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.
- 18.4 No waiver by the Seller or any breach of any provision of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision and the Seller shall not be prejudiced by any forbearance or indulgence granted by it to the Buyer.