

SMS TECHNOLOGIES LIMITED TERMS AND CONDITIONS OF SALES

1. DEFINITIONS:

In these Terms:

"Buyer" means any company, firm or individual from whom an offer to purchase is received.

"Company" means SMS Technologies Limited (registered in England and Wales under number 02159350).

"Contract" means the contract for the sale and purchase of the Goods.

"Goods" means the service or services, item or items manufactured and/or supplied by the Company to the Buyer in accordance with these Terms.

"Intellectual Property Rights" means any patent, copyright, design, trademark or other intellectual property right.

"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Buyer and the Company.

2. BASIS OF THE SALE:

2.1 Subject to any variation under condition 2.2 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No variation to these Terms shall be binding unless agreed in writing by the authorised representative of the Company.

2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. QUOTATIONS:

3.1 A quotation shall be construed as an invitation to treat only and is not to be taken as an offer on the part of the Company to supply Goods on the terms stated. Any offer of an order arising from a quotation shall only become a binding Contract if it is accepted in writing by an authorised representative of the Company.

3.2 Unless otherwise agreed by the Company in writing, a quotation is valid for 30 days only from its date and is subject to confirmation at the time of acceptance by the Company.

4. ORDERS:

4.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.

4.2 While the Company reserves the right to accept telephone, facsimile or e-mail orders, such orders should always be confirmed in writing the same day by the Buyer and marked "Confirmation". Any orders not so marked will be treated as fresh orders and the Buyer shall be responsible for the consequences of any resulting duplication.

4.3 The Company reserves the right to refuse any order or offer of an order.

4.4 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

5. SPECIFICATIONS:

5.1 The specification for the Goods shall be as set out in the Buyer's order or offer of order (if accepted by the Company).

5.2 If the Goods are to be supplied to a specification submitted by the Buyer, the Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements.

5.3 All specifications given in descriptive literature issued by the Company are stated as accurately as possible but are not guaranteed. The Company reserves the right to amend all specifications in descriptive literature, without notice to the Buyer, but where the specification of the Goods has been confirmed by the Company accepting the Buyer's order or offer of order, the Company shall only amend such specification if the changes do not materially affect the quality or performance of the Goods.

6. CANCELLATION OF ORDERS: No cancellation of an order will be effective unless in writing and until accepted by the Company. The Company reserves the right to refuse to accept any cancellation of an order and in particular no cancellation will be accepted of orders for Goods to special requirements or not normally stocked by the Company if the manufacture or obtaining by the Company of such Goods is in process or has been completed.

7. PRICES:

7.1 Subject to 7.2 below, the price of the Goods shall be the Company's quoted price. All prices are quoted subject to revision or withdrawal without notice.

7.2 The Company reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

7.3 All prices are quoted "ex works" unless otherwise agreed in writing between the Buyer and the Company and the Buyer shall be liable to pay for packing and transport by carrier.

7.4 All prices quoted by the Company are exclusive of Value Added Tax which the Buyer shall be additionally liable to pay to the Company.

8. PAYMENT:

8.1 Subject to any special terms agreed in writing between the Buyer and the Company, the Company may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods to the carrier, unless the Goods are to be collected by the Buyer, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection.

8.2 All invoices are NET and no settlement discount is allowed.

8.3 Payment is due 30 days after the date of invoice except where the Company stipulates "cash with order" terms. The time of payment of the price shall be of the essence of the Contract.

8.4 The Company reserves the right to charge interest (both before and after judgment) at the rate of 4% per annum above Barclays Bank PLC base rate from time to time on any monies outstanding beyond the due date.

8.5 No special terms of payment will be operative unless confirmed in writing by the Company.

8.6 The Company reserves the right to suspend or cancel any unfulfilled order where payment for any previous order remains outstanding after due date of payment or where in the reasonable opinion of the Company the Buyer is unlikely to be able or willing to pay his debts as they fall due.

9. RISK AND RESERVATION OF TITLE:

9.1 The risk of damage or loss of the Goods shall pass to the Buyer as soon as the Goods are delivered in accordance with condition 10.1 below.

9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the title in the Goods remains with the Company until such time as the Company has received payment in full in respect of the price of the Goods and all other sums the Buyer owes to the Company at the date of delivery of the Goods. Until title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored and protected and identified as the property of the Company, but the Buyer may resell or use the Goods in the ordinary course of its business.

9.3 Until title has passed to the Buyer the Buyer must insure the Goods on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company. The Buyer must hold the proceeds of the insurance on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

9.4 Until the title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Company may at any time require the Buyer to deliver up to the Company any of the

Company's Goods in the Buyer's possession and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. In the event that any of the Goods have been disposed of, the Buyer will hold any monies received for the benefit of the Company.

9.5 If the Buyer shall default in the punctual payment of any sum due to the Company whether under this Contract or otherwise, the Company shall be entitled forthwith to repossess any Goods which remain the property of the Company and the Buyer shall for the purpose afford the Company access to, and the Company shall be entitled to enter, any premises of which the Buyer is in occupation or to which he has access and where any Goods may then be.

10. DELIVERY:

10.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises at any time after the Company has notified the buyer that the Goods are ready for collection, or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to the carrier.

10.2 Any dates quoted for delivery of Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract.

11. DELAY IN TAKING DELIVERY: If the Buyer fails or refuses to take delivery of the Goods on the date laid down in the Contract, he shall be liable to the Company for any loss occasioned by such failure and for charges thereby incurred by the Company and for a reasonable charge by the Company for the care and custody of the Goods whether he has been specifically requested to take delivery of the Goods or not.

12. RETURN OF GOODS: No return of Goods will operate to affect the liability of the Buyer under the Contract unless such return is accepted by the Company in writing and no such acceptance will be given unless previous notice of intention to return with the reason therefor and quoting reference number of the Release Note, Invoice or Contents Note to the Company. After acceptance by the Company of such notice the Goods shall be returned to the Company carriage paid and in good condition.

13. INTELLECTUAL PROPERTY RIGHTS:

13.1 So far as the Company is aware no Goods supplied by the Company under this Contract infringe the Intellectual Property rights of any third party but no warranty expressed or implied is given against the existence of any such right, and the Company will in no circumstances be liable to the Buyer in respect of any infringement of such rights by the Buyer as a result of the purchase of the Goods.

13.2 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the company in settlement of, any claim for infringement of Intellectual Property Rights of any other person which results from the Company's use of the Buyer's specification.

14. GUARANTEE AND LIABILITY:

14.1 Subject to the following provisions the Company guarantees that the Goods will be free from defects in material and workmanship for a period of 18 months from the date of delivery, or 12 months from their installation, whichever is the sooner.

14.2 The above guarantee is given by the Company subject to the following conditions:

14.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

14.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;

14.2.3 the Company shall be under no liability under the above Guarantee (or any other guarantee, warranty or condition) if the total price for the Goods has not been paid by the due date for payment;

14.2.4 the above Guarantee does not extend to parts, material or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

14.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

14.4 A claim by the Buyer under the Guarantee in 14.1 above must be notified to the Company (where the defect was not apparent on delivery) within 14 days from discovery of the defect. If the Buyer does not notify the Company accordingly, the Company shall have no liability for such defect. Where a valid claim is made the Company shall replace the Goods (or the part in question) free of charge, in which case the Company shall have no further liability to the Buyer.

14.5 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (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 (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

14.6 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

14.6.1 Act of God, explosion, flood, tempest, fire or accident;

14.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

14.6.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

14.6.4 import or export regulations or embargoes;

14.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

14.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

14.6.7 power failure or breakdown in machinery.

15. INSOLVENCY OF BUYER:

15.1 This Clause 15 applies if:

15.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or

15.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;

15.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

15.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

15.2 If this Clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary.

16. BUYER'S PROPERTY: The Company will take reasonable care of the Buyer's property in its custody, but shall not be held responsible for any loss or damage arising from any cause, except to the extent of the Company's insurance policies.

17. GENERAL:

17.1 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

17.2 If any provision of the Contract is held by a Court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

17.3 The Contract shall be governed by the laws of England, and the Buyer agrees to the non-exclusive jurisdiction of the English court.