

Terms and Conditions of Sale

Infinity Innovations Ltd

1 Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

"Business Day": a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"Conditions": the terms and conditions set out in this document.

"Contract": the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"Customer": the person or firm who purchases the Goods from the Supplier.

"Force Majeure Event": has the meaning given in clause 11.

"Goods": the goods (or any part of them) set out in the Order.

"Order": the Customer's formal written order for the Goods, as set out in the Customer's purchase order form, or in any other document sent by the Customer to the Supplier following confirmation by the parties of the Specification and which contains an order reference number.

"Specification": any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier.

"Supplier": Infinity Innovations Limited (registered in England and Wales with company number 8213152).

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

2 Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues an invoice in accordance with clause 7.4, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 15 Business Days from its date of issue.

3 Goods

3.1 The Goods are described in the Specification.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4 Delivery

4.1 The Supplier shall ensure that each Delivery of the Goods is accompanied by a dispatch note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the delivery method (where applicable), the payment terms, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 Delivery of the Goods shall be completed ex-works (EXW) (INCOTERMS 2010) the Supplier's premises at Infinity Innovations Ltd, Becks Mill, Becks Road, Keighley, West Yorkshire, United Kingdom, BD21 1SD.

4.3 Where the parties agree that the Supplier is to arrange for the carriage of the Goods to the Customer's premises, the Customer shall bear the cost and risk of such carriage. The insured cost of Goods when using a shipping company is £1250.00 per tonne.

4.4 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement

goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.7 The Customer may request, within 24 hours of Delivery that the Goods are returned to the Supplier and the Supplier shall be entitled to accept or reject the Customer's request at its absolute discretion. This clause is without prejudice to any of the rights or remedies available to the Supplier under the Contract.

5 Quality

5.1 The Supplier warrants that on delivery the Goods shall be of the type and quantity set out in the Specification.

5.2 If:

5.2.1 the Customer gives notice in writing to the Supplier within 24 hours of delivery (or deemed delivery as set out in clause 4.7) that the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, replace the Goods, or make good any shortfall, or refund the price of the Goods in full.

5.3 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract, and, for the avoidance of doubt, the Customer acknowledges that the Supplier accepts no responsibility for ensuring that the Specification is adequate or suitable for the Customer's particular requirements.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6 Title and Risk

6.1 Title to the Goods and the risk in the Goods shall pass to the Customer on completion of delivery.

7 Price and Payment

7.1 The price of the Goods shall be the price set out in the Supplier's quotation.

7.2 The price of the Goods is exclusive of the costs and charges of insurance and transport of the Goods, which shall be invoiced to the Customer separately.

7.3 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.4 The Supplier may invoice the Customer for the Goods on or at any time after it has received an Order for the Goods.

7.5 Except where agreed otherwise by the Supplier and the Customer in accordance with clause 7.7, the Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice.

7.6 Except where agreed otherwise by the Supplier and the Customer in accordance with clause 7.7, the Goods shall not be dispatched for delivery until full payment for the invoice is received in cleared funds.

7.7 The Supplier and the Customer shall be free to agree that the Customer shall be entitled to pay the invoice in full and cleared funds by an agreed date, such date to be after dispatch of the Goods, provided such agreement is confirmed in the invoice. Where such an agreement has been reached, the due date for payment shall be as set out in the invoice.

7.8 Payment shall be made to the bank account nominated in writing by the Supplier and may be made by bank transfer, cheque, or debit or credit card (in which case a transaction fee may apply). In all cases, payment will not be deemed until all funds are received into the nominated bank account cleared and in full. Time of payment is of the essence.

7.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("**due date**"), then the Supplier shall be entitled, without limiting any other rights or remedies it may have and without liability to the Customer, to withhold, suspend or cancel delivery of the Goods and/or the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.10 Where the Supplier has cancelled delivery of the Goods under Clause 7.9, the Supplier shall be entitled to treat this as a repudiatory breach and the

- Contract as terminated and, in the event the Customer wishes to receive the Goods, it shall be required to place a new Order for the Goods.
- 7.11 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8 Customer's Insolvency or Incapacity**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- 8.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 8.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 8.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 8.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 8.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 8.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 8.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 8.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.8 (inclusive);
- 8.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- 8.2.11 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 8.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9 Termination**
- 9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 Business Days of that party being notified in writing of the breach.
- 9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 On termination of the Contract for any reason:
- 9.3.1 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 9.3.2 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 10 Limitation of Liability**
- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.1.2 fraud or fraudulent misrepresentation;
- 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 10.1.4 defective products under the Consumer Protection Act 1987; or
- 10.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- 10.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 10.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
- 11 Force Majeure**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 12 General**
- 12.1 Assignment and subcontracting.**
- 12.1.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 12.2 Notices.**
- 12.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- 12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 12.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.3 Severance.**
- 12.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 12.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.