

# Conditions of Sale

**The Customer's attention is drawn in particular to the provisions of clause 9**

## 1. INTERPRETATION

- 1.1 Definitions. In these Conditions, the following definitions apply:  
Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business. Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.  
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, firm or company who purchases the Goods from the Supplier.  
Force Majeure Event: has the meaning given in clause 10. Goods: the goods (or any part of them) set out in the Order.  
Order: the order by the Customer for the Goods, as set out in the purchase order form of the Customer.  
Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier. Supplier: O P Systems Limited in England and Wales with company number 11417182).  
Supplier's Premises: the premises occupied by the Supplier either where the Goods will be made available for collection or from where the Goods will be dispatched from.
- 1.2 Construction. In these Conditions, the following rules apply:
- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - A reference to a party includes its personal representatives, successors or permitted assigns.
  - 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.
  - 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.
  - 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 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 shall ensure that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, 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, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract. In particular the sales representatives engaged by the Supplier have no authority to amend or vary any term of the Contract or make any representations regarding the Goods. Amendment or variations to the Contract can only be authorised in writing by one of the Supplier's directors.
- 2.5 Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the catalogues or brochures of the Supplier are issued or published 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 30 days from its date of issue or the Customer's earlier

acceptance unless otherwise extended in writing by the Supplier and will automatically elapse unless the Supplier otherwise agrees in writing.

### 3. **GOODS**

- 3.1 All descriptions of the Goods in any brochures or sales materials of the Supplier are merely indicative of the nature of the Goods. The Supplier reserves the right to alter the appearance or functionality of the Goods or their materials and components provided that they do not differ from the Specification agreed.
- 3.2 Any advice given by the Supplier to the Customer as to the usability or suitability of the Goods for any particular purpose is given in good faith and should not be relied upon by the Customer, treated as a representation or in any way form part of this Contract. The Customer shall satisfy itself that the Goods ordered will be suitable for the purposes for which it requires the Goods in all material respects.
- 3.3 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use of the Specification by the Supplier. This clause 3.3 shall survive termination of the Contract.
- 3.4 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 delivery note which shows the date of the Order, all relevant reference numbers of the Customer and the Supplier, 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 The Supplier shall either:
- (a) make the Goods available for collection by the Customer from the Supplier's Premises; or
  - (b) the Goods to the location set out in the Order; or
  - (c) such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed:
- (a) (where the Delivery Location is the Supplier's Premises) the date when the Supplier notifies the Customer that the Goods are available for collection; or
  - (b) (where the Delivery Location is to the location set out in the Order or such other location as the parties may have agreed) the date when the Goods have been delivered to the Delivery Location.
- 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 failure of the Customer 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 failure of the Customer to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 (Where the Delivery Location is the Supplier's Premises) If the Customer fails to collect the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods

are ready, then, except where such failure or delay is caused by a Force Majeure Event or the failure of the Supplier to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed one the Business Day following the day on which the Supplier notified the Customer that the Goods were ready;  
and
  - (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs charge the Customer for any shortfall below the price of the Goods. The Supplier shall be under no obligation to account to the Customer for any excess achieved on the sale of the Goods.
- 4.8 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.

## 5. **QUALITY**

- 5.1 The Supplier warrants that on delivery the Goods shall conform with their description, conform with any Specification and be free from material defects in material and workmanship and that they will remain so for a period of twelve months from the date of delivery.
- 5.2 Subject to clause 5.4, if:
- (a) the Customer gives notice in writing to the Supplier within 3 Business Days that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the place of business of the Supplier at the cost of the Customer, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. In the event that following inspection the Supplier finds that the Goods are not defective or that any defect in the Goods is not as a result of action or omission by them, then the Customer shall indemnify the Supplier in respect of all costs and expenses incurred by the Supplier in inspecting the said Goods (to include without limitation legal, administrative and professional costs, travel expenses, transportation and courier fees).
- 5.3 If the Customer fails to give notice of non-compliance set out in clause 5.2 above it shall be deemed to have accepted the Goods
- 5.4 The Supplier shall not be liable for failure of the Goods to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2; or
  - (b) the defect arises because the Customer failed to follow the oral or written instructions of the Supplier as to the commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
  - (c) the defect arises as a result of the Customer failing to store all of the Goods in a dry place, properly and securely stacked, raised from off the ground and adequately protected from the weather; or
  - (d) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer; or
  - (e) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (g) the Customer fails to allow the Supplier access to the Premises where the Goods are either stored, located or installed; or
  - (h) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

## 6. **TITLE AND RISK**

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 4.3 above.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
  - (b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the bailee of the Supplier;
  - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the property of the Supplier;
  - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
  - (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any Premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. PRICE AND PAYMENT**
- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the published price list of the Supplier in force as at the date of delivery.
- 7.2 The Supplier may without notice to the Customer but before delivery, increase the price of the Goods by not more than 5% to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, courier or transportation costs, and other manufacturing costs); or
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 Increases in the price of the Goods beyond 5% shall be subject to the Supplier securing the Customer's written consent. In the event that the Customer does not consent to the price increase, the consignment of the Goods which is subject to a price increase shall be cancelled and both the Supplier's and the Customer's obligations in respect of that consignment shall be discharged. All other obligations and duties in respect of any other consignment of the Goods shall remain in force.
- 7.4 The price of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods to the Delivery Location by the Supplier's own transport. Delivery elsewhere or other than by the Supplier's own transport shall be subject to an additional charge.
- 7.5 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.
- 7.6 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.7 The Customer shall pay the invoice in full and in cleared funds within 30 days of the end of the month in which the invoice is received. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of AIB Group (UK) Plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The Supplier reserves the rights to claim interest and compensation under The Late Payment of Commercial Debts (Interest) Act 1998.
- 7.9 Payment for the Goods on the due date shall be a condition precedent to further performance by the Supplier under this Contract and without prejudice to any other rights the Supplier may have, it may suspend its performance under this Contract or any contract between it and the Customer until payment for all monies due have been made. The Supplier also reserves the right to demand a security deposit of not less than 10% of the purchase price on future Orders received prior to its acceptance of any future Orders.
- 7.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). 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. THE 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:
- (a) 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 or limited liability partnership) 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;
  - (b) 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;
  - (c) (being an individual) the Customer is the subject of a bankruptcy petition or order;
  - (d) 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;
  - (e) (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;
  - (f) (being a company) the holder of a qualifying charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;

- (g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
  - (h) 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(a) to clause 8.2(g) (inclusive);
  - (i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - (j) the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - (k) (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.
- 8.3 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.

## 9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude the liability of the Supplier for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) 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
  - (b) the total liability of the Supplier 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 purchase price of the Goods.

## 10. FORCE MAJEURE

- 10.1 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.
- 10.2 In the event that the Force Majeure Event shall continue for a period in excess of 30 days and is such as to prevent the substantial performance of the Contract, then either the Supplier or the Customer may terminate the Contract. The Supplier's only liability in such event is to refund any monies (pro rata) received for any Goods that we are unable to deliver. The Customer's only liability in such event is to pay for any Goods that have been delivered or made available for collection at the Supplier's Premises prior to the event occurring.

## 11. GENERAL

- 11.1 Assignment and other dealings.
- 11.2 The Supplier may at any time assign, transfer, mortgage, charge, sub contract or deal in

- any other manner with all or any of its rights or obligations under the Contract.
- 11.3 The Customer may not assign, transfer, mortgage, charge, sub contract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11.4 Notices.
- 11.5 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 or other next working day delivery service, commercial courier, fax or e-mail.
- 11.6 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first-class post or other next working day delivery service, 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.
- 11.7 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.8 Severance.
- 11.9 If any provision or part-provision of the Contract is or becomes in valid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.10 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is in valid, illegal or un enforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.11 Waiver. A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.12 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.13 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by a director of the Supplier.
- 11.14 Governing law. 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 the law of England and Wales.
- 11.15 Jurisdiction. Each party irrevocably agrees that the Birmingham County Court/Birmingham District Registry of the High Court of Justice (whichever shall be applicable having regard to the quantum of any claim and the provisions of the Civil Procedure Rules applicable from time to time) shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).