

Atlantis Solutions Ltd

Terms and Conditions of Sale

1. Definitions

(a) Atlantis Solutions Ltd is hereinafter referred to as "Seller".
(b) The addressee named as such on the face of the quote, acknowledgement, invoice and/or any addendum is hereinafter referred to as "Buyer".

2. General

(a) All quotations are given and all orders accepted on these terms, which supersede all other terms inclusive of those stipulated or incorporated or referred to by the Buyer. All orders hereafter made by the Buyer shall be deemed to be made subject by these terms.
(b) Subject to Clause 3 below, no contract for the sale of goods ("the Goods") shall be concluded until the issue of an "Acknowledgement of Order" by the Seller.
(c) The Buyer acknowledges that there are no representations outside these terms which have induced him to enter into the contract and these terms and those on the face hereof shall constitute the entire understanding between the parties for the sale of the Goods.
(d) No modification of these terms shall be effective unless it is made by an express written agreement between the parties. The signing by the Seller of any of the Buyer's documentation shall not imply any modification of these terms.

3. Quotations

Quotations are subject to withdrawal at any time before receipt of an unqualified order from the Buyer and shall be deemed to be withdrawn unless so accepted within 90 days from their date. Oral quotations are for guidance only and are not binding upon the Seller.

4. The Goods

(a) All descriptions and illustrations contained in the Seller's literature are intended merely to present a general idea of the Goods described therein and nothing contained within such material shall form any part of the contract.
(b) All information and documentation provided by the Seller to the Buyer are provided on the express understanding that the same are confidential and will not be disclosed, copied or made available to third parties, and will only be used in connection with the Goods in respect of which they were issued.
(c) The seller reserves the right without prior notice to make changes to the Goods or their specification which do not materially affect the physical or functional performance or the appearance of the goods or which are required by law.

5. The Price

(a) The Seller reserves the right to increase the price of the Goods by any increase that may have arisen in the cost to the Seller of manufacturing or acquiring or delivery of the goods.
(b) All prices are quoted ex-works.
(c) All prices exclude VAT.
(d) Where the Seller undertakes to provide or arrange carriage to a place of delivery specified by the Buyer such carriage will be charged in addition to the price.

6. Cancellation

The Buyer may not cancel the contract without the written consent of the Seller which if given shall be deemed to be on the express condition that the Buyer indemnifies the Seller against all loss, damage, claims or actions arising from such a cancellation unless otherwise agreed in writing.

7. Payment

(a) Payment in full for the Goods shall be made within 30 days of delivery of the invoice for the same to the Buyer.
(b) Where payment for the Goods is to be made by installments the failure of the Buyer to pay any installment in due time shall entitle the Seller to treat such failure as repudiation of the whole contract by the buyer and to recover damages for such breach of contract.
(c) Interest on late payments shall accrue for the whole period is due until the date payment is actually made at the rate of 5% above HSBC Bank Plc's base rate before any judgment.

8. Delivery

(a) All delivery dates are estimates only and the time of the delivery shall not be the essence of the contract. In no circumstances shall the Seller be liable to compensate the Buyer in damages or otherwise for non-delivery or late delivery of the Goods or any of them whatever reason or for any loss consequential or otherwise arising therefrom.
(b) Should the Seller be prevented from or hindered in delivering the Goods or any part thereof by reason of war, riot, explosion, fire, flood strike, lock-out, shortage of materials or labour or any cause beyond the Seller's control, the time for delivery shall be extended until the operation of the cause preventing or hindering delivery has ceased.
(c) Should the Seller be prevented from or hindered in delivering the Goods or any part thereof by reason of delays caused by the Buyer then the Seller shall be entitled to recover the value of the Goods should the delay from the estimated delivery date exceed 3 months.
(d) The Seller shall be entitled to deliver the Goods in one or more consignments unless otherwise expressly agreed.
(e) If delivery of any item comprised in the Goods has not been made within 6 months of estimated delivery date, the buyer shall be entitled to cancel its order in respect of that item, but the Seller shall in no circumstances be liable to compensate the buyer in damages or otherwise for late delivery or non-delivery of the Goods or any of them for whatever reason or for any loss consequential or otherwise arising therefrom.
(f) Delivery shall be deemed to have taken place when the Goods are dispatched from the Seller's works.
(g) The Seller shall not be liable for any loss of any kind to the Buyer or his agent arising from the damage to the Goods occurring after the risk has passed to the Buyer however caused, nor shall any liability of the Buyer to the Seller be diminished or extinguished by the reason of such loss.
(h) The Seller reserves the right to cancel or suspend all further deliveries under the contract in the event that:

(i) The Buyer defaults in making any payment due hereunder or under any other contract between the Seller and Buyer;
(ii) The Buyer, being a natural person shall die or become bankrupt;

(iii) The Buyer, being a company, shall enter liquidation or have a receiver appointed of its undertaking;

(iv) Events similar or analogous to any of the foregoing shall occur under the laws of any jurisdiction in which the Buyer is incorporated.

(i) Where free issue equipment (hardware or software) is to be supplied by the Buyer to facilitate design, development, testing or delivery of the Goods:

(ii) The Buyer shall provide the free issue equipment in working condition and in a timely fashion to meet the requirements of the programme;

(iii) The Buyer shall provide all supporting documentation for the free issue equipment such as operation & maintenance manuals, code, design details etc as deemed necessary by the Seller;

(iv) If the Buyer fails to meet the obligations of 8(i)(i) and/or 8(i)(ii) then the Seller may modify or suspend the programme until the obligations are met and claim any resultant additional costs from the Buyer. The Seller may also claim for costs resulting from attempting to use the free issue equipment;

(iv) Should the Buyer be unable to provide working free issue equipment and the design, development, delivery or testing of the Goods can only be achieved by the Seller making said free issue equipment operational then the Seller reserves the right to claim from the Buyer any costs incurred in making free issue equipment operational.

9. Acceptance

(a) Unless expressly stated and agreed in writing at commencement of work acceptance of the Goods shall comprise:

(i) A demonstration that hardware deliverables are complete and functioning;

(ii) A demonstration that any software supplied as a deliverable executes: making appropriate set ups, controls and measurements;

(iii) Supply of documentation is excluded from the acceptance.

(iv) Demonstration that the Goods operate in the environment of the Buyer's premises is excluded from acceptance;

(v) Demonstration that the Goods can operate multiple units is excluded from acceptance.

(b) Where free issue equipment is to be supplied by the Buyer to facilitate acceptance of the Goods:

(i) The Buyer shall provide the free issue equipment in working condition and in a timely fashion to meet the requirements of the programme;

(ii) The Buyer shall ensure that the free issue equipment is of the same condition and revision as that supplied in 8(i).

(iii) The Buyer shall provide all supporting documentation for the free issue equipment such as operation & maintenance manuals, code, design details etc as deemed necessary by the Seller;

(iv) The Buyer shall provide a witness for the acceptance detailed in 9(a)(i) and 9(a)(ii);

(v) If the Buyer fails to meet the obligations of 9(b)(i) and the free issue equipment is not operating correctly then the Goods shall be demonstrated in accordance with 9(a)(i) and 9(a)(ii) as far as is possible without the free issue equipment;

(vi) Should the Buyer be unable to provide working free issue equipment and the acceptance of the Goods can only be achieved by the Seller making said free issue equipment operational then the Seller reserves the right to claim from the Buyer any costs incurred in making free issue equipment operational;

(vii) If the Buyer fails to meet the obligations of 9(b)(i), 9(b)(ii), 9(b)(iii) and/or 9(b)(iv) within two weeks of notification from the Seller that the Goods are ready for acceptance then it shall be deemed that acceptance has been successfully completed.

10. Passing of Risk and Property

(a) Risk of loss or damage passes from the Seller to the Buyer when the Goods are dispatched from the Seller's works.

(b) The property in the Goods shall not pass to the Buyer until the whole of the price has been paid and until payment the Buyer shall hold the Goods as bailee for the Seller and the following provisions of Clause 10 apply.

(c) The whole of the price is not treated as paid until the instrument of payment given by the Buyer has been met on presentation or otherwise honoured in accordance with its terms. The Seller may sue for the whole of the price at any time after it has become payable.

(d) In event of sale or other disposition of the Goods by the Buyer, the Buyer shall, subject to sub-clause (f) below, hold on trust for the Seller:

(i) If the Goods have not been incorporated into other goods or processed, the whole proceeds of sale;

(ii) If the Goods have been incorporated into other goods or processed, a just proportion of the proceeds of sale.

(e) The trust declared in sub-clause (d) above shall be void of and to the extent that a trust in like terms arises by operation of law in favour of the Seller.

(f) The Buyer shall not:

(i) Pledge the Goods or documents of title thereto, or allow any lien to arise thereon;

(ii) Process the Goods other than in the ordinary course of the Buyer's business;

(iii) deal with or dispose of the Goods or documents of title thereto or any interest therein;

(iv) hold itself out as the Seller's agent in respect of the Goods.

(g) If the Buyer defaults in payment of any sum owing to the Seller then the Seller shall be entitled to the immediate return of all Goods sold by the Seller to the Buyer in which the property has not passed to the Buyer and the Buyer hereby authorises the Seller to recover the Goods and enter any premises of the buyer for that purpose. Demand for or recovery of Goods does not discharge either the Buyer's liability to pay the whole of the price or the Seller's right to sue for the whole of the price.

11. Inspection of Goods

(a) The Buyer shall inspect the Goods immediately on delivery and shall notify the Seller within seven days of delivery of any matter whereof the Buyer may allege that the Goods are not in accordance with the contract or are defective in materials or workmanship. If the Buyer fails to give notice the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect apparent to reasonable examination and the Buyer shall be deemed to have accepted the Goods accordingly. If the Buyer can demonstrate to the Seller that the Goods are not in accordance with the contract or are defective then the Seller may remedy this by electing to replace the Goods or refund the purchase price against the return of Goods.

12. Use of Goods

(a) Where the Goods are manufactured to designs or configurations specified or supplied by the Buyer, the Buyer warrants to the Seller that the Buyer will make all necessary examination of the Goods prior to the Goods being brought into use to ensure that the Goods are designed to be and are operational so as not to present a risk to the health and safety of workmen or others using the same.

(b) The Buyer shall indemnify the Seller against all actions, suits, claims, demands, losses, charges costs and expenses which the Seller may suffer or incur in connection with any third party claim alleging facts which if established would indicate a breach of the warranties on the part of the Buyer contained in this condition 12.

13. Defects after delivery

(a) The Seller will make good, by repair or at the Seller's option by the supply of a replacement, defects which under proper use appear in such part or parts of the Goods as are of the Seller's manufacture within a period of 12 months after the Goods have been delivered and arise solely from faulty design, materials or workmanship: Provided that always that the defective parts are promptly returned by the Buyer carriage paid to the Seller's works and become the property of the Seller if replaced.

(b) These terms set out the Seller's entire liability in respect of the Goods, and the Seller's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities, express or implied, statutory or otherwise in respect of the quality or the fitness for any particular purpose of the Goods otherwise howsoever except any implied by

law or statute and which by law or statute cannot be excluded. Save as provided in these terms and except as aforesaid the Seller shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in the Goods or failure to correspond to specification or sample or for any damage or loss resulting from such defects or from any work done in connection therewith.

14. Limitations of liability

The Seller's liability (if any) whether in contract tort or otherwise in respect of any defect in the Goods, or for any breach of this Agreement or of any duty owed to the Buyer in connection herewith, shall be further limited in the aggregate to the price of the Goods in question.

15. The Seller's lien

In addition to any rights of lien to which it may be by law entitled the Seller shall have a general lien on all goods of the Buyer in the Seller's possession for all sums, whether liquidation or quantified or not, due from the Buyer to the Seller. The Seller shall not be liable for loss of or damage to the Buyer's property in the Seller's possession either as a result of the exercise by the Seller of its lien or otherwise.

16. Indemnity

The Buyer shall indemnify the Seller in respect of all damage or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith arising from the condition or use of the Goods in the event and to the extent that the damage, injury or loss shall have been occasioned partly or wholly by the carelessness of the Buyer or his servants or agents or by any breach by the Buyer of its obligations to the Seller hereunder.

17. Patents, Trademarks, etc., custom built equipment

(a) The Goods are sold subject to the rights of any person, whether in respect of any patent, trademark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent and restrict the sale or use of the Goods in any part of the world; and the Buyer will in this respect accept such title to the Goods as the Seller may have.

(b) Where the Goods are manufactured to designs or configurations specified or supplied by the Buyer, the Buyer warrants to the Seller that the Goods are so designed or configured and/or the processes so used do not infringe the rights of any person, whether in respect of any patent, trademark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent and restrict the sale or use of the Goods or the use of such processes in any part of the world. The Buyer shall indemnify the Seller against all actions, suits, claims, demands, losses, charges, costs and expenses which the Seller may suffer or incur in connection with any claim by any third party alleging facts which if established would indicate a breach of the warranties in this condition 17 (b).

18. Solicitation

The Buyer shall not directly or indirectly solicit or offer employment to any of the Seller's personnel associated with the supply of good and services until six months after the completion of delivery without the Seller's consent.

19. Licences

In the case of export orders the Buyer shall be responsible for obtaining all and any necessary export Licence(s) and the Buyer shall render all necessary assistance to the Seller to obtain such Licence(s). The Seller accepts no liability for loss, damage or expenses arriving from any delay or failure in obtaining an export licence.

20. Proper Law

The contract shall be governed by and interpreted in accordance with English Law and the Buyer submits to the jurisdiction of the High Court of Justice in England but the Seller may enforce the contract in any court of competent jurisdiction.

21. Assignment

The Buyer shall not assign any benefit under the contract without the consent in writing of the Seller, which may if given be on such terms as to guarantee or indemnify or otherwise as the Seller thinks fit.

22. Notices

Any notice given under or pursuant to the contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by means of tele-communication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the face hereof may be deemed validity and effectively given on the day when in the ordinary course of the means of transmissions it would first be received by the addressee in normal business hours.

23. Invalidity

If any of these terms shall be held to be illegal, invalid or unenforceable (in whole or in part) under any rule of law or enactment, such term or part shall to that extent be deemed not to form part of these conditions but the enforceability of the remainder shall not be affected.