

CONDITIONS OF SALE

Order Terms and Conditions

1. INTERPRETATION

1.1 In these conditions:
Conditions: are these Terms and Conditions of sale and (unless the context otherwise requires) include any special terms and conditions on the face of the Order Form.
Contract: is the contract for the purchase and sale of the Goods.
Customer: is the person whose order for the Goods is accepted by the Seller.
Goods: are the goods (including any instalment of the goods or any parts for them) specified on the Order Form.
Order Form: the Seller's standard order form.

Seller: is Sunny Communications Ltd, of 2 Watt Road, Churchfields, Salisbury, Wiltshire SP2 7UD. Registered in England. No. 6472837

1.2 Any reference to any legislative provision is a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Headings are for convenience only and do not affect interpretation.

2. BASIS OF THE SALE

2.1 The Seller shall sell and the Customer shall purchase the Goods in accordance with any written order of the Customer signed by the authorised representatives of both parties.

2.2 All Goods are sold subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted, or any order is made or purported to be made, by the customer.

2.3 No variation to the Conditions shall be binding unless agreed in writing by the Seller.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations which are not so confirmed (unless such representations were fraudulently made).

2.5 Any advice or recommendation given by the Seller or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Customer's own risk and, accordingly, the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 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 Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS AND SPECIFICATIONS

3.1 Quotations are valid for 30 days only.

3.2 No order submitted by the Customer shall be deemed to be accepted by the Seller unless and until the Order Form is signed by the authorised representatives of both parties.

3.3 The Seller will assist the Customer with its application for third party finance, if required. If the Customer fails to obtain such third party finance, this will not affect in any way any of the other terms of the Contract.

3.4 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) and for giving the Seller any necessary information within a sufficient time to enable the Seller to perform the Contract.

3.5 The quantity and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Customer) or the Seller's acceptance of the Customer's order. The Seller reserves the right to alter the specifications after acceptance by the Customer if the Goods specified are no longer available or have been superseded with a similar or improved product.

3.6 The Seller reserves the right to change the specification of the Goods so that the Goods conform to any applicable statutory or EU requirements or, where the Goods are to be supplied to the Seller's specification, if the change in specification does not materially affect the quality or performance of the Goods.

3.7 No order which has been accepted by the Seller may be cancelled by the Customer except with the agreement in writing of the Seller and on terms that the Customer shall indemnify the Seller in full for the greater of:

3.7.1 either the sum of 40% of the total amount payable under the order; or

3.7.2 all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF GOODS

4.1 The price of Goods shall be the Seller's quoted price as stated on the Order Form.

4.2 The Seller may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (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 requested by the Customer in delivery dates, quantities or specifications for the Goods, or any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate information of instructions.

4.3 Any applicable value added tax, import or export duties or other taxes or duties are payable by the Customer in addition.

5. TERMS OF PAYMENT

5.1 The agreed deposit will become payable by the Customer immediately upon placing the order. If the Goods are to be installed by the Seller the balance shall become due upon installation unless otherwise agreed in writing. In all other instances payment shall become due on receipt by the Customer of the Seller's invoice.

5.2 If the customer fails to make payment in full on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller may:

5.2.1 cancel the Contract or suspend any further deliveries to the Customer;

5.2.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Customer);

5.2.3 charge the Customer interest (both before and after any judgement on the amount unpaid, at the rate of 2 per cent per month (or part of a month) until payment in full is made);

5.2.4 demand immediate payment of all outstanding invoices;

5.2.5 render the Goods non-functional until such time as all outstanding invoices and interest are settled in full.

6. DELIVERY

6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the agreed location, as detailed on the Order Form.

6.2 Any dates given for delivery are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Customer.

6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Customer's or any third party's fault, and the Seller is accordingly liable to the Customer, the Seller's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.5 If the Customer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then the Seller may:

6.5.1 Store the Goods until actual delivery and charge the Customer for the costs (including insurance) of storage; or

6.5.2 Sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Customer for the excess over sums owing by the Customer or charge the Customer for any shortfall.

6.6 Where the Seller is to deliver the Goods other than at the Seller's premises, the Customer shall notify the Seller and the carrier in writing within (48) hours of delivery of any damage to the Goods or shortage in delivery.

6.7 The Customer shall inspect the Goods as soon as the Goods or part of the Goods are connected to the network or the Customer has access to the network and unless the Customer notifies the Seller in writing within 7 days of any defects the Customer shall be deemed to have accepted them. The Customer shall not be entitled to withhold payment if such connection of the Goods or access is only partial. If the Customer delays such connection to the network then the price will become due and payable immediately. After acceptance the Customer shall not be entitled to reject Goods which are not in accordance with the Contract. In no event shall the Customer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Customer to reject the Goods.

6.8 If the Seller has agreed to install the Goods it will do so as soon as practicable after delivery but will not be liable for any loss suffered by the Customer owing to delay in installing the Goods.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Customer.

7.1.1 at the time when the Seller notifies the Customer that the Goods are available for collection; or

7.1.2 if the Goods are to be delivered otherwise than at the Seller's premises at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Customer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Customer (or the Customer's lessor under any finance agreement), the Customer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence), the Customer shall deliver up the Goods to the Seller on demand and, if the Customer fails to do so immediately, the Seller may enter any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

7.5 The Customer may not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Customer does so all monies owing by the Customer to the Seller shall immediately become due and payable.

8. WARRANTIES AND LIABILITIES

8.1 The Seller warrants that it holds unencumbered title to the Goods.

8.2 Subject to the conditions set out below, the Seller shall pass to the Customer (to the extent that the Seller is legally entitled to do so) the benefits of the manufacturer's warranty as applicable.

8.3 Where a valid claim is made in writing by the Customer in respect of Goods which are defective or which do not meet their specifications as detailed in the quotation the Seller shall be entitled to repair or replace the Goods (or the part in question) free of charge, or at the Seller's sole discretion refund the Customer the price of the Goods (or a proportionate part thereof) but the Seller shall have no further liability to the Customer.

8.4 Subject as expressly provided in these conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all other warranties, terms or conditions implied by statute or common law arising out of or in connection with the supply of the Goods or resale of the Goods by the Customer are excluded to the fullest extent permitted by law. The Seller's prices are determined on this basis.

8.5 The Seller shall have no liability whatsoever:

8.5.1 in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage), improper installation or maintenance, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.5.2 if any sum owing by the Customer to the Seller has not been paid;

8.5.3 if loss is suffered by the Customer because the Goods fail to perform to their specifications due to faults in the service provided by the network provider.

8.6 Save as otherwise expressly provided in these Conditions, the following provisions set out the Seller's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:

8.6.1 any breach of the Seller's contractual obligations arising under the Contract; and

8.6.2 any representation (other than fraudulent misrepresentation) statement or tortious act or omission including negligence arising under or in connection with these conditions.

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING

PROVISIONS OF THIS CONDITION

8.7 Any act or omission on the part of the Seller or its employees, agents or sub-contractors falling within condition 8.6 above is described as an "event of Default".

8.8 That part of the Seller's liability to the Customer for death or injury resulting from the Seller's negligence, or the negligence of the Seller's employees', agents' or sub-contractors', that the law does not permit the Seller to exclude shall be unlimited.

8.9 To the extent the law does not permit such liability to be excluded and save as otherwise expressly provided, the Seller's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the price of the Goods.

8.10 Subject to condition 8.9 above, the Seller shall not be liable to the Customer in respect of any Event of Default for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Seller had been advised of the possibility of the Customer incurring the same.

8.11 The Seller shall not be liable to the Customer, 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 Seller's obligations, if the delay or failure was due to any cause beyond the Seller's reasonable control (including (without limitation) flood, fire, war or threat of war, sabotage, civil disturbance or governmental action, import or export regulations or embargoes).

8.12 Save as otherwise expressly provided, the Customer shall indemnify the Seller in respect of any cost, claim, loss or liability made by any person in connection with the Goods.

9. INSOLVENCY OF CUSTOMER

9.1 If:

9.2 the Customer fails to make any payment when due or breaches any provision of the Contract; or the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a seller) goes into liquidation; or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of these events is about to occur in relation to the Customer and notifies the Customer accordingly.

9.3 the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. GENERAL

10.1 The Seller may assign its rights and obligations under the Contract. The Customer may not assign its rights and obligations under the Contract.

10.2 Any notice shall be in writing addressed to the addressee at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this condition 10.2 to the party giving notice.

10.3 No delay or failure by the Seller in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Seller of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Seller shall be effective unless in writing.

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

10.6 These Conditions and the Seller's acknowledgement of order constitute the entire agreement between the Seller and the Customer concerning the supply of the Goods and replace and supersede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation).

10.7 The Seller's rights are cumulative and in addition to any rights available to it at common law.

10.8 The Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.