

**ELTEK SYSTEMS LTD**

**TERMS AND CONDITIONS OF SALE**

**1. INTERPRETATIONS** 1.1 In these Conditions:-

"BUYER" means the person who accepts a quotation of the Seller for the sale of the Goods, or whose order for the Goods is accepted by the Seller.  
"CONDITIONS" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"CONTRACT" means the contract for the purchase and sale of the Goods which constitutes the Buyer's purchase order ("PO") and these Conditions.  
"GOODS" means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

"PARTY" means the Buyer and the Seller. Parties shall be construed accordingly.

"SELLER" means Eltek Systems Limited whose registered office is situated at Eltek House, Nene Valley Business Park, Oundle, Peterborough, PE8 4HN (registered in England under company number 1691497).

"WRITING" includes electronic communications and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 Words denoting the singular shall include the plural and vice versa.

**2. CONDITIONS** 2.1 These Conditions shall govern any Contract between the Seller and the Buyer and no variation thereof shall be effective unless accepted in Writing by the duly authorised representative of the Seller. These Conditions shall prevail over any contrary or inconsistent terms or conditions stipulated or referred to by the Buyer in the order or in any negotiations. The Buyer acknowledges that any shall be accepted via a purchase order acknowledgement which shall reference these Conditions.

2.2 All terms, conditions and warranties whether expressly implied, statutory or otherwise, and all representations, whether made orally or in writing, before or after the date of any order in relation to the sale of any Goods, are (save for the implied warranty under Section 12 Sale of Goods Act 1979 and save as may otherwise be provided by law) hereby excluded save to the extent that the same appear in these Conditions or are specifically agreed in writing by the duly authorised representatives of both parties.

2.3 No agreement for the sale of Goods shall result unless and until a PO is accepted by the Seller's authorised representative.

**3. QUOTATIONS** 3.1 The Seller's quotation (if any) is merely an invitation for an order subject to these Conditions and no agreement will result until the authorised representative of the Seller has accepted such order.

3.2 By placing an order subsequent to its receipt of or its referral to these Conditions, the Buyer acknowledges that these Conditions shall prevail over any qualification or condition purported to be imposed by the Seller and the Buyer.

3.3 All prices quoted are valid for 30 days only or until earlier acceptance in Writing by the Buyer, after which they may be altered by the Seller without giving notice to the Buyer.

3.4 Any price for Goods shall be based on EXW (INCOTERMS 2020) and exclusive of any applicable value added tax, for which the Buyer shall be additionally liable, save where expressly stated otherwise by the Seller.

3.5 Prices indicated in the Seller's quotations, catalogues, price lists and other advertising material shall not be binding on the Seller.

**4. TERMS OF PAYMENT** 4.1 Net cash within 30 days after date of invoice. The Seller shall be entitled to invoice [insert normal invoice term]

4.2 The Seller reserves the right to charge the greater of statutory interest or 7% above the base rate of the Bank of England for any overdue payments. In the event of other means being required to recover an outstanding debt, the Seller reserves the right to recover any costs incurred.

4.3 When the Seller's invoices are submitted for extra site work, commissioning or other works where circumstances make a full written quotation impractical, it is the Buyer's duty to inform the Seller of any query or dispute, in Writing, within 7 days of receipt of the invoice, otherwise the debt will be deemed to have been accepted in full.

4.4 The Seller reserves the right, by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the costs of 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 and 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 Seller adequate information or instructions.

**5. PAYMENT UP FRONT** The Buyer shall if so required by the Seller make a deposit with the Seller before manufacturing is commenced and, in the event of delay of the order by the Buyer, the Seller shall be entitled to retain any such deposit in addition demonstrable costs incurred by the Seller.

**6. DELIVERY** 6.1 The Seller shall arrange delivery and, where applicable, installation of the equipment at the Buyer's site but the Buyer will reimburse the Seller for the costs of transport and of any insurance arranged by the Seller at the Seller's sole discretion on respect of any of the equipment whilst in transit.

6.2 The Buyer shall at the Buyers' expense ensure that the site is ready to receive the Goods on the date agreed for delivery and that all installation facilities recommended or requested by the Seller have been provided, and the Buyer will reimburse the Seller for any costs and expenses (including the cost of storage of any equipment) incurred by the Seller in the event of any delay in delivery or installation of the Goods however caused arising from the unpreparedness or unsuitability of the site for the installation on any date freed for delivery or installation.

6.3 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any caused beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-

6.3.1 store the Goods until actually delivered and charge the Buyer for reasonable costs (including insurance) of storage, or,

6.3.2 sell the Goods at the best price easily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.4 Where the Goods are to be delivered in installments, each delivery shall constitute a separate Contract if failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installment shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 As from delivery of the Goods or as directed by the Buyer, the Goods shall be kept at the risk of the Buyer but the Goods shall remain the property of the Seller until installation is complete where applicable.

6.6 Estimates of delivery are subject to revision on receipt by the Seller of the Buyer's full specification and whilst every endeavour will be made by the Seller to deliver the equipment by any date agreed, in no circumstances can the Seller accept liability for any loss or damage directly or indirectly suffered by the Buyer or any third party by reason of any delay in delivery or installation however caused.

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

**7. PASSING OF PROPERTY AND RISK** 7.1 Until the company has received full payment in respect of all sums owing to the Seller from the Buyer, under this or any other Contract:-

- (a) the title to the Goods supplied shall remain with the Seller;
  - (b) the Buyer will be entitled to sell the Goods and pass the property in the same to third parties in the normal course of business until the events set out in (c) below, but the proceeds of re-sale and/or the claim to such proceeds will be the Seller's until such time as all sums owing to the Seller, whether under this Contract or any other Contract, have been paid;
  - (c) the Seller will be entitled at any time while any monies under any Contract are outstanding to notify the Buyer of the Seller's intention to re-take possession of the Seller's Goods;
  - (d) on receipt of notice from the Buyer on the occurrence of any of the events set out under (e) below, the Buyer's authority to sell the Goods shall be withdrawn and all proceeds of sale received by the Buyer shall be paid to the Buyer into a bank account separate from all other of the Buyer's monies and held in such account for the Seller. Further, all Goods shall be immediately delivered to the Seller, and the Seller by the Seller's servants or agents shall have the right during normal business hours to enter upon the Buyer's land or buildings to take possession of the Seller's Goods; and
  - (e) any event such as: (i) any notice to the Buyer that a Receiver as defined under the Bankruptcy Act 1914 or manager is to be or has been appointed; (ii) (where you are a corporate body) any notice to the Buyer that a petition to wind up the Buyer's company is to be or has been presented, or any notice of a resolution to wind up the Buyer's company (save for purposes of a reconstruction or amalgamation); (iii) a decision by the Buyer that the Buyer intends to make an arrangement with the Buyer's creditors (iv) any act of bankruptcy as defined by Section 1 of the Bankruptcy Act 1914.
- 7.2 Risk in the Goods shall pass to the Buyer upon delivery.

**8. INSPECTION AND TESTING** The Buyer shall inspect and test the goods in operation within 14 days after the completion of delivery or services and notify the Seller forthwith in Writing of any defect or any inefficiency in operation, and if no such notification is received by the Seller, the Goods shall be deemed have been accepted by the Buyer.

**9. WARRANTY** 9.1 The Seller warrants the Goods manufactured by the Seller to be free from defects in workmanship and the materials under normal and reasonable use and service under conditions disclosed to the Seller, and confirmed in Writing by the Seller but the Seller's liability under this warranty shall be limited to the repair or replacement solely at the discretion of the Seller of any such Goods or part thereof which during the period of three (3) months immediately following the date of installation of the Goods at the Buyer's site shall be found by the Seller's inspection to be defective in workmanship or materials. The Seller will under this warranty supply free of charge any replacement components required provided always that the Seller shall be entitled to make a reasonable charge for labour, travelling time and expenses in carrying out repairs or replacement under this warranty. This warranty is subject to the following conditions:-

- (a) the Goods shall be used at all times in accordance with the operating manual and instructions supplied by the Seller;
- (b) the Goods shall be properly maintained and serviced in accordance with the Seller's recommendations;
- (c) no alterations, modifications or additions shall be made to the Goods and no person other than the Seller's representative shall be permitted to effect any replacement of parts, maintenance adjustment or repairs to the Goods;
- (d) defects in the Goods or in its operation which occur after the period referred to in Clause 7 hereof shall be reported to the Seller within 72 hours after they become apparent as should with reasonable diligence have become apparent to the Buyer or his agents, employees or operators;
- (e) mechanical or electrical components which are of an expendable nature are excluded from this warranty; and
- (f) this warranty does not affect the Buyer's statutory rights.

9.2 Save as aforesaid, and save as may have been agreed in Writing by the Seller, any statement, condition or warranty, expressed or implied, statutory or otherwise as to the working life or wear of the Goods or as to their suitability for use under any specific conditions or for any particular purpose, is hereby excluded and deemed to be inconsistent herewith and the Seller shall not under any circumstances whatsoever be liable for any loss, damage or injury, to any person or property, directly or indirectly occasioned by, or arising from, the use or operation of the Goods or any part thereof or any defect in or malfunction of the Goods or any component loss, damage or injury, to any person or property, directly or indirectly occasioned by, or arising from, the use or operation of the Goods or any part thereof or any defect in or malfunction of the Goods or any component part.

**10. SPECIFICATION** 10.1 Where specifications are supplied by the Seller, these shall remain the property of the Seller.

10.2 Where specifications are to be supplied to the Seller, the Buyer shall ensure that such specifications are delivered to the Seller in reasonable time to enable the Seller to complete manufacture, delivery and installation by any date agreed therefore.

10.3 The Seller shall be entitled to revise the price in the light of any modification, amendment or addition to the specification required by the Buyer or found by the Seller to be necessary.

10.4 The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification which involves the infringement of any letters, patent design right or registered design, or the infringement of any other rights whatsoever of a third party.

10.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

10.6 Any intellectual property rights in any of the Goods shall remain with the Seller and/or its licensors unless otherwise agreed in writing.

#### **11. LIMITATION OF LIABILITY**

11.1 The liability of the Seller to the Buyer whether in contract, tort or by way of indemnity shall not in any event exceed the prices paid or payable under the relevant Contract.

11.2 The Seller shall not be liable to the Buyer for any indirect or consequential losses, loss of profit, loss of revenue or loss of use.

11.3 Nothing in the Contract shall operate to limit or exclude Party's liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation or to the extent that such limitation or exclusion is prohibited by law.

**12. SUB-CONTRACT** The Seller reserves the right to sub-contract the fulfillment of the order by the Buyer (including installation) or any part thereof.

**13. FORCE MAJEURE** The performance of the Contract is subject to variation or cancellation by the Seller owing to Act of God, war, insurrection, strikes, lock-outs, fire, flood, epidemic, drought, tempest or any other cause beyond the control of the Seller or owing to any inability by the Seller to procure materials or articles required for the performance of the Contract and the Seller shall not be held responsible for any inability to delivery caused by any such contingency.

#### **14. ANTI-CORRUPTION**

The parties will comply with all applicable laws, statues, regulations and codes relating to anti-bribery requirements, including but not limited to the Bribery Act 2010. The Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer commits a breach of this clause 14.

## 15. DATA PROTECTION

- 15.1 The Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. In this Clause 15, Data Protection Legislation means the Data Protection Act 2018 or any successor legislation.
- 15.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the data controller and the Seller is the data processor (where Data Controller and data Processor have the meanings as defined in the Data Protection Legislation).
- 15.3 Without prejudice to the generality of Clause 15.1, the Seller shall, in relation to any Personal Data processed in connection with the performance by the Seller of its obligations under the Agreement the Seller shall:
- 15.3.1 process personal data only on the written instructions of the Purchaser unless required by applicable law to otherwise process the personal data;
  - 15.3.2 Ensure process Personal Data only on the written instructions of the Buyer required by Applicable Laws to otherwise process that Personal Data;
  - 15.3.3 ensure that it has in place appropriate technical and organizational measures to protect against unauthorized or unlawful processing of Personal Data against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorized or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 15.3.4 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - 15.3.5 not transfer any Personal Data outside the European Economic Area unless appropriate safeguards in relation to the transfer have been provided;
  - 15.3.6 notify the Buyer without undue delay on becoming aware of a Personal Data breach;
  - 15.3.7 at the written request of the Buyer, delete or return Personal Data and copies thereof to the Buyer on termination of this Agreement unless required by Applicable Law to store the Personal Data; and
  - 15.3.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 15.

## 16. MISCELLANEOUS

- 16.1 If any provision of the Contract is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if the Contract had been with the invalid or illegal or unenforceable provision eliminated.
- 16.2 No failure by the Seller to enforce any of the terms of the Contract shall constitute a waiver of its rights hereunder.
- 16.3 Nothing in the Contract is intended to, nor shall it confer any rights on a third party and The Contract (Rights of Third Parties) Act 1999 is excluded and shall not apply to the Contract.
- 16.4 The Contract and any dispute arising out or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.
- 16.5 The Contract is the entire agreement between the parties in relation to the subject matter therein and supersedes any previous agreements, arrangements, undertaking or proposals, oral or written.