

## KINESYS PROJECTS LIMITED

### CONDITIONS OF SALE

#### 1. DEFINITIONS

- 1.1. In these Conditions:-
  - 1.1.1. "Buyer" means the person whose order of the Goods is accepted by the Seller;
  - 1.1.2. "Contract" means a contract for the sale of the Goods;
  - 1.1.3. "Goods" means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions;
  - 1.1.4. "Seller" means Kinesys Projects Limited.
- 1.2. The headings in these Conditions are for ease of reference only and shall not affect their interpretation.

#### 2. BASIS OF THE SALE

- 2.1. The Seller shall sell and the Buyer shall purchase the goods subject to these Conditions. Any terms or conditions in the Buyer's order or other documentation of whatsoever kind which are inconsistent with these Conditions shall have no effect.
- 2.2. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the parties.
- 2.3. 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 any Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4. Any advice or recommendations given by the Seller or its employees or agents to the Buyer 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 Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendations which is not so confirmed.
- 2.5. 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.
- 2.6. All descriptions and specifications, drawings and particulars of weights and dimensions used by Kinesys are approximate only, and are intended only to present a general idea of the goods to which they refer and shall not form part of the contract. Due to continuing development, Kinesys reserves the right to change specifications without notice.

#### 3. ORDERS AND SPECIFICATIONS

- 3.1. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.
- 3.2. The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted by the Seller).
- 3.3. 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.
- 3.4. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing, of the Seller and on the terms that the Buyer shall indemnify the Seller in full against 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 any claim.
- 3.5. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim:-
  - 3.5.1. for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person; or
  - 3.5.2. for negligence or under the Consumer Protection Act 1987 which results from the Seller's use of the Buyer's specification.

#### 4. PRICE AND PAYMENT

- 4.1. The price of the Goods shall be the Seller's quoted price.
- 4.2. 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 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 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.
- 4.3. Except as otherwise stated under the terms of any quotations or in any price list of the Seller, and unless otherwise agreed in writing between

the Buyer and the Seller, all prices are given by the Seller for delivery of the Goods at the Seller's premises and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

- 4.4. The price and all other sums due from the Buyer to the Seller shall be increased to include VAT at the current rate.
- 4.5. The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery or collection of the Goods unless the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 4.6. The Buyer shall pay the Seller's invoices hereunder within 30 days of the date of invoice. Time shall be of the essence in respect of the payment of all sums due hereunder.
- 4.7. The Seller reserves the right to charge the Buyer interest at the rate of 8% per annum above the mean base rate for the time being of the London Clearing Banks on all invoices which are not paid in accordance with Condition 4.6 such interest being calculated from a date 30 days after the date of invoice until actual payment compounded quarterly and to be payable as well after as before any judgement obtained in respect thereof.

#### 5. DELIVERY

- 5.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 5.2. Any dates quoted for delivery of the Goods 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 unless previously agreed by the Seller in writing.
- 5.3. 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 other than any reason or any cause 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:-
  - 5.3.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 5.3.2. sell the Goods at the best price readily 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. RISK AND PROPERTY

- 6.1. Risk or damage to or loss of the Goods shall pass to the Buyer:-
  - 6.1.1. in the case of Goods to be delivered at the Seller's premises, at the time of delivery when the Seller notifies the Buyer that the Goods are available for collection; or
  - 6.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 6.2. 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 Buyer 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 Buyer for which payment is then due.
- 6.3. Until such times as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 6.4. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon the premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 6.5. The Buyer shall not be entitled to 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 Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

#### 7. WARRANTIES AND LIABILITY

- 7.1. Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.
- 7.2. The above warranty is given by the Seller subject to the following conditions:-

- 7.2.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 7.2.2. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, 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.
- 7.3. Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 7.4. Any claim by the Buyer which is based on any defect in the quality or conditions of the Goods shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure.
- 7.5. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods of their use or resale by the Buyer, except as expressly provided in these Conditions.

#### 8. INTELLECTUAL PROPERTY

- 8.1. The Buyer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights connected with the Goods shall not pass to the Buyer.
- 8.2. The Buyer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of carrying out any of the work required to be done to the Goods in accordance with the requirements or specifications of the Buyer involving any infringement of any rights of any third party.

#### 9. SOFTWARE

- 9.1. Where the Goods include software and the Buyer has been furnished with the developer's licence, the Buyer shall sign and return the licence to the Seller within 7 days or as otherwise specified in the licence, and if the Buyer fails to sign and return the licence:-
  - 9.1.1. the Seller reserves the right to withhold release of the software and
  - 9.1.2. the Seller shall nevertheless be entitled to payment in full for the software.
- 9.2. In the absence of the developer's software licence, the Buyer shall accept a non-exclusive, non-transferable licence to use the software as provided in these Conditions and subject to the further provisions of Conditions 9.3 and 9.4.
- 9.3. the Buyer shall not copy (other than for normal equipment operation), reproduce, translate, adapt, vary or modify the software or communicate any part of it to a third party without the prior written consent of the Seller
- 9.4. The licence granted by Condition 9.2 shall continue until or unless:-
  - 9.4.1. either party gives to the other one month's prior written notice of termination, on or before the expiry of which the Buyer shall return or destroy the software as the Seller shall direct, which notice may only be given to the Seller if the continued use of or possession of the software by the Buyer infringes the developer's third party rights or if the Seller is required to give notice by law; or
  - 9.4.2. the Seller terminates the licence immediately if the Buyer fails, or has failed, to comply with any term or Condition of the Contract including (without limitation) breach of copyright, patent or confidentiality.

#### 10. TERMINATION

- 10.1. The Seller shall have the right to terminate a Contract forthwith by giving notice in writing if the Buyer:-
  - 10.1.1. fails to make payment of any sum in accordance with Condition 4; or
  - 10.1.2. shall commit any other material breach of its obligations hereunder and shall not within 14 days of notice of such breach remedy the same; or
  - 10.1.3. shall enter into liquidation whether compulsorily or voluntarily otherwise than for the purposes of amalgamation or reconstruction without insolvency or shall compound or make any arrangement with its creditors or shall be the subject of an application for an administration order or shall be the subject of any proposal under Part 1 of the Insolvency Act 1986 for a composition in satisfaction of its debts.
- 10.2. Any termination of a Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party.

#### 11. FORCE MAJEURE

Although the Seller shall use all reasonable endeavours to discharge its obligations under a Contract in a prompt and efficient manner, it does not

accept responsibility for any failure or delay caused by circumstances beyond its control.

#### 12. EXPORT TERMS

- 12.1. Where the Goods are supplied for export from the United Kingdom, the provision of this Condition 12 shall (subject to any terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 12.2. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 12.3. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered at the Seller's premises and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 12.4. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 12.5. Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a Bank acceptable to the Seller or, if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight of the order of the Seller at such branch of Bank of Scotland in the United Kingdom as may be specified in the bill of exchange.

#### 13. GENERAL

- 13.1. No neglect, delay or indulgence by the Seller in enforcing a Contract shall prejudice the rights of the Seller or be construed as a waiver.
- 13.2. The Buyer hereby waives all and any future claims and rights of set off against any sums due to the Seller hereunder regardless of any equity, set off or counter-claim on the part of the Buyer against the Seller.
- 13.3. Any notice hereunder shall be in writing and may be served by sending it by pre-paid first class letter post or delivery (if in the case of a limited company) to the address stated herein, and in any case, to the last known address of the addressee. In proving service of any notice it shall be sufficient to prove in the case of posting that the envelope containing the notice was properly addressed, stamped and posted. Service shall be deemed to be effective in the case of posting at noon of the second business day following the day of posting and any notice delivered to an address by hand shall be deemed to be effective from the date of such delivery.
- 13.4. The Buyer shall not assign or otherwise transfer all or any part of a Contract without the prior written consent of the Seller.
- 13.5. The formation, construction and performance of all Contracts shall be governed in all respect by English law. The parties hereby agree to submit to the exclusive jurisdiction of the English Courts.