

Able Data Installations Plc

Terms & Conditions of Business

1. Definitions

- 1.1 "The Company" means Able Data Installations Plc
1.2 "The Customer" means the customer of the Company
1.3 "The Contract" means any contract for the sale of goods and/or the supply of services.
1.4 "The Goods" means any goods forming the subject of the Contract including parts and components of, or materials incorporated in them and services to be supplied by the Company.

2. Quotations and Pricing

- 2.1 Quotations by the Company unless otherwise stated in them shall be open for acceptance within 7 days of the date of the quotation.
2.2 Unless otherwise stated in writing, all prices quoted or referred to shall be net of VAT and shall exclude packing, carriage and insurance.
2.3 The Company shall be entitled to vary the prices quoted or otherwise agreed to the extent that such variations accurately reflect bona fide increases in the costs of materials or in other charges made to the Company by its suppliers.

3. Existence of Contract

- 3.1 No contract shall come into existence until the Customer's order (however given) is accepted by the earliest of:
(a) the Customer's written acceptance
(b) Delivery of Goods, and
(c) the Company's invoice.
3.2 These conditions shall be incorporated in the Contract to the exclusion of any Terms or Conditions stipulated or referred to by the Customer.

4. Payment

- 4.1 All invoices are payable without discount of any kind in pounds sterling within 30 days of the date of the Company's invoice at the Company's premises stated on the invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.
4.2 Should work be suspended at the request of, or delayed through any default of the Customers for a period of 30 days the Company shall then be entitled to payment for work already carried out, materials officially ordered and other additional costs including storage.
4.3 Time for Payment shall be of the essence of the contract. Without prejudice to any other rights of the Company if the Customer fails to pay the invoice price by the due date the Customer shall not be allowed any discount given in that invoice (and shall pay interest on any overdue amount from the date of which payment was due to that on which it is made (whether before or after judgement) on a daily basis at a rate of 5% per annum over the base rate from time to time quoted by the Lloyds Bank Plc and reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

5. Title

- 5.1 For the purpose of Section 12 of the Sales of Goods Act 1979 the Company shall transfer only such title or rights in the respect of goods as the Company has and if the Goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Company.
5.2 Notwithstanding the earlier passing of risk title in the goods shall remain with the Company and shall not pass to the Customer until the amount due under the invoice for them has been paid in full.
5.3 Until title passes the Customer shall hold the goods as bail for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.
5.4 The Company shall be entitled at any time before title passes to repossess and use or sell all or any of the Goods and so terminate (without any liability to the Company) the Customer's right to use, sell or otherwise deal with them and for that purpose determining what if any Goods are held by the Customer and inspecting them to enter any premises of the Customer.
5.5 Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Company and shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's money.
5.6 The Company shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Customer.

6. Risk, Delivery and Performance

- 6.1 Goods are deemed to be delivered to the Customer when the Company makes them available to the Customer or any Agent of the Customer or any carrier (who shall be deemed to be the Customer's Agent whoever pays its charges) at the Company's premises or other delivery point agreed by the Company.
6.2 Risk in the Goods shall pass to the Customer on delivery.
6.3 The Company may at its discretion deliver the Goods by instalments in any sequence.
6.4 Where the Goods are delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods.
6.5 Any dates quoted by the Company for the delivery of the Goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates.
6.6 If the Customer fails to take delivery of the Goods or any part of them on the due date, or fails to provide all instructions, documents, licences, consents and authorisations required to enable the Goods to be delivered on the due date, the Company shall be entitled upon giving written notice to the Customer to arrange for the storage of the goods, whereupon the risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to the Company all costs and expenses including storage and insurance charges arising from its failure.
6.7 The Company shall not be liable for any penalty loss injury damage expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

7. Claims Notification

- 7.1 Any claims for non-delivery of any Goods shall be notified in writing by the Customer to the Company within 10 days of the date of the Company's invoice.
7.2 Any claim that any Goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Customer to the Company within 4 days of the delivery of the Goods.
7.3 Any alleged defect shall be notified by the Customer to the Company within 7 days of delivery of the Goods.
7.4 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods.
7.5 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Customer shall if so requested in writing by the Company promptly return any Goods the subject of any claim and any packing securely packed and carriage paid to the Company for examination.
7.6 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with provisions of this condition.

8. Scope of Contract

Under no circumstances shall the Company have any liability of whatever kind for:

- 8.1 Any defects resulting from wear and tear accident improper use by the Customer or use by the Customer otherwise in accordance with the instructions or advice of the company or the manufacturer of any Goods or neglect or from any instructions or materials provided by the Customer.

- 8.2 The suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company.

- 8.3 Any substitution by the Company of any materials or components not forming part of any specification of the Goods agreed in writing by the Company.

- 8.4 Any technical information, recommendations statements or advice furnished by the Company its servants or agents not given in writing in response to a specific request from the Customer before the Contract is made, or:

- 8.5 Any variations in the quantities or dimensions of any Goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods, and the substantial materials or components are of a quality equal or superior to those originally specified.

9. Extent of Liability

- 9.1 The Company shall have no liability to the Customer (other than liability for death or personal injury resulting from the Company's negligence) for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract of any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract exempt in accordance with this condition.

- 9.2 If the Customer establishes that any Goods have not been delivered, have been delivered damaged, are not of the correct quantity or do not comply with their description the Company shall, at its option, replace with similar goods any Goods which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value.

- 9.3 If the Customer establishes that any Goods are defective the Company shall, at its option, replace them with similar goods, or allow the Customer credit for their invoice value or (to the extent that the Goods are not of the Company's manufacture) assign to the Customer (so far as the Company is able to do so) any warranties given by the Manufacturer of the Goods to the Company.

- 9.4 The delivery of any replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.

- 9.5 Where the Company is liable in accordance with this condition in respect of on some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.

- 9.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustment alteration or other work has been done to the Goods by any person other than the Company.

- 9.7 The Company shall not be liable where any Goods the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods will, if available, be supplied by the Company at the prices ruling at the date of despatch.

- 9.8 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods.

10. Introduction Fee for Subsequent Engagement of Personnel

- 10.1 If during the term of this Agreement, or within 12 months of its termination, you agree to employ or make use of any individual introduced to you by us in the course of the provision of the Services in any capacity whether temporary, permanent or self-employed otherwise than directly through us, or you refer such an individual to any of your associate or subsidiary companies or to any third party who so employs or makes use of him or her, you will immediately pay us an introduction fee equal to that individual's equivalent annual salary based on his actual rate of remuneration at the last moment at which he or she was employed by or contracted to us (computed if necessary on the basis of 8 hours per day, or 40 hours per week, or 150 hours per month). Interest will accrue on this sum at the current Barclaycard rate per calendar month from the date of employment or engagement until payment.

11. General

- 11.1 The Contract is between the Company and the Customer as principals and shall not be assignable by the Customer without the express written consent of the Company.

- 11.2 The Company shall have a lien on all the Customer's property in the Company's possession for all sums due at any time from the Customer and shall be entitled to use sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such sums on 28 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sums due to the Company and the costs of sale or disposal the Company shall be discharged of any liability in respect of the Company's property.

- 11.3 The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company or becomes insolvent, has a receiver appointed of its business or is compulsory or voluntarily wound up or the Company bona fide believes that any of those events may occur, and in case of termination shall be entitled to forfeit any deposit paid.

- 11.4 If the Goods are manufactured in accordance with any design or specification provided or made by the Customer the Customer shall indemnify the Company from and against all claims costs expenses and liability of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party or that any matter is of a libellous nature. This indemnity shall extend to any amounts paid as a solicitor advises in settlement of any claims.

- 11.5 All plans, sketches, drawings, specifications, samples and other data provided or made by the Company shall remain its property and all technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company.

- 11.6 The Contract and its subject matter are confidential and shall not be disclosed or used for any unauthorised purpose.

- 11.7 The Customer shall provide the Company with electricity and water free of charge for the fixing of goods at the Customer's premises.

- 11.8 The Customer shall be solely responsible for the obtaining of any consents that may be necessary from any statutory body or similar authority for the fixing of the goods to the Customer's premises.

12. Variation

- 12.1 No variation to this Contract or any of the Company's standard terms or specifications shall be valid unless agreed in writing between the parties.

13. Force Majeure

- 13.1 The Company shall not be liable for any failure in the performance of any of its obligations under the Contract due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond their reasonable control.

14. Law and Construction

- 14.1 The Contract shall be governed by English Law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding the Contract except that the Company invokes the jurisdiction of the courts of any other country.

- 14.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.

15. Notices

- 15.1 Any notice to be given under the Contract (or this agreement) shall be in writing and telexed sent by facsimile transmission or forwarded by first class prepaid (registered or recorded delivery) letter post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the telex or facsimile transmission or on the day following that on which the notice was posted.