

CONDITIONS OF SALE

Any contract for the sale of goods and services by Antares TDC - a trading division of TDC Aberdeen Limited shall be subject to the following terms and conditions, unless otherwise specifically agreed in writing by a Director of the Company.

1. Conditions

These conditions of sale constitute the only conditions upon Antares TDC - a trading division of TDC Aberdeen Limited (the Company) is willing to supply goods and services, and shall override and exclude any conditions or terms at any time imposed by the customer, save to the extent that such conditions may be expressly incorporated herein. Acceptance by the customer of any tender or quotation shall imply acceptance of these conditions. All tenders and quotations are made by the Company subject to satisfactory trade and credit references, and are open for acceptance within thirty days from the date thereof.

2. Variations to Conditions

No variation of these conditions shall be effective or binding upon the Company unless it is accepted in writing by a Director of the Company, and these conditions shall nevertheless apply insofar as they are not specifically excluded.

3. Catalogues and Drawings etc

Unless otherwise agreed by the Company in writing any data, printed matter, design, drawing, specifications, illustrations, advertising matter or catalogues at any time supplied to the customer are subject to alteration without notice and are intended merely to represent a general idea of the goods described therein and shall not be deemed to be representations or warranties by the Company or to form the basis of any contract. All sketches, drawings, and original work remain the property of the Company and subject to its copyright. The customer shall not communicate any such drawings, sketches or original work nor any information contained therein to any third party without the Company's previous written consent.

4. Limitation of liability

- a) The liability of the Company in respect of any defect in or failure of goods supplied shall only extend to goods wholly or substantially manufactured by the Company and shall be limited in all cases to replacing defective goods or repairing any defects in goods provided that such defects arise under proper use of the goods and are attributable solely to faulty material or workmanship and provided also that the defects arise and notice thereof is given to the Company within 24 months of the delivery of the goods to the customer.
- b) The Company will in respect of goods which are not of its own manufacture use all reasonable endeavours to pass on to the customer the benefit of any guarantee provided by the supplier or manufacturer of such goods but not so as to impose on the Company any liability in respect thereof.
- c) Save as provided above all warranties, conditions, representations and liabilities (express or implied) on the part of the Company in relation to any goods supplied are hereby expressly excluded and the Company shall not be liable for any loss, expense, or damage of whatever kind arising as a result of or in connection with the supply of goods hereunder or their use of anything done or omitted to be done in connection therewith.
- d) If any of the limitations on liability contained in this agreement is held not to be valid as going beyond what is fair and reasonable having regard to the circumstances which are or ought reasonably to have been known to or in the contemplation of the Company and the customer at the date of the contract in question, but would be valid if part of the wording were deleted or its extent reduced or modified then such limitations on liability shall apply with such modifications as may be necessary to make it enforceable.
- e) The Company shall not be under any liability in respect of goods which are altered, modified or repaired without the Company's written consent or defects which arise wholly or partly as a result of negligence or improper handling by any person or any other cause outside the control of the Company.

5. Performance

All performance data and other details given in respect of goods sold by the Company must be considered approximate only and are not warranted or guaranteed in any way. The customer is responsible for satisfying himself that the performance of all goods will be sufficient and suitable for his purpose.

6. Delivery Charges

All prices quoted and all contract prices are (unless otherwise expressly agreed by the Company in writing) ex-works and exclusive of VAT and all carriage, packing and transportation costs and charges (including insurance in transit) will be payable by the customer in addition to the contract price. Unless the customer requests otherwise when the order is placed, the Company will arrange for packing, transportation and delivery in accordance with the customer's written instructions. The Company shall in the absence of specific instructions be entitled to use any means of transportation and carrier it may select and if shipment is required may ship the goods in such consignments as may be expedient.

7. Delivery

- a) Unless otherwise agreed in writing, any time quoted for delivery is to be reckoned from the date of receipt of all information and instructions necessary to enable the Company to proceed with the order.
- b) Any time quoted for delivery of goods shall not be a term of the contract between the Company and the customer and any delay in delivery shall not constitute a breach of such contract.
- c) Any time given by the Company for the delivery of goods or any rates of output given is an estimate only and whilst every endeavour will be made to meet such estimates the Company reserves the right to amend the given date at any time. Without prejudice to sub-clause (6) above, delivery may in any event be delayed, suspended or cancelled without liability on behalf of the Company in the event of industrial action, inability to obtain services or materials, government intervention, acts of God, war, civil disturbance or any other cause whatsoever beyond the direct control of the Company.
- d) If for any reason other than those set out in the preceding sub-clause delivery is delayed, the customer shall have the right to cancel the order in question provided that the customer reimburses to the Company all costs and liabilities incurred by the Company to third parties.
- e) In addition the Company shall in no event be liable for any indirect or consequential losses, costs or penalties incurred or suffered by the customer as a result of the Company's inability or failure for any reason to meet specified delivery dates or rates of output.
- f) Where goods are ordered for delivery by instalments each instalment shall be deemed to be sold under a separate Contract on the same terms mutatis mutandis as this Contract. Failure by the Company to deliver any instalment shall in no way affect the Contract as to the other instalments.

8. Goods in Transit

No claim in respect of any loss or damage to goods in transit or any shortage on delivery will be accepted unless and to the extent that the Company may recover from the carrier concerned and for this purpose the customer shall be responsible for notifying the carrier and taking all further steps as shall be necessary to preserve a claim against the carrier concerned. The customer undertakes to inform in writing the company and the carrier of non-delivery or damage within 14 days of the despatch date.

9. Terms of Payment

- a) Payment of the contract price and any delivery or other charges shall (unless otherwise agreed in writing) be made to the Company within 30 days from the date of invoice, subject to satisfactory credit approval. First transactions will be on a proforma basis. Credit terms will be considered for second and subsequent transactions subject to satisfactory trade references.

- b) The Company shall be entitled to charge interest on any account which is not paid by the customer within the said period of 30 days at a rate equal to 4% above the National Westminster Bank base rate for the time being in force (with a minimum of 8% p.a.) until the date on which payment is received in full.

10. Transfer of Property and Risk in Goods

- a) The risk in the goods will pass to the customer upon delivery, but legal and equitable ownership shall remain with the Company until payment in full has been received (each order being considered as a whole) or until resale of the goods by the customer, if earlier, in which case the Company's beneficial entitlement shall attach to the proceeds of such resale or to the claim for such proceeds.
- b) Should the goods become constituents of or be converted into other products while subject to the Company's equitable and beneficial ownership, the Company shall have the equitable and beneficial ownership in such other products as if they were solely and simply the goods and accordingly sub-clause (a) shall as appropriate apply to such other products.
- c) Upon delivery and until payment in full has been made the customer shall insure and keep the goods insured against all and every risk, including specifically but without prejudice the generality of the foregoing: damage by the customer or third parties, fire, explosion, aircraft, death, tempest and flood. The customer shall from the date of delivery be responsible for the maintenance and care of the goods and for any storage costs in respect thereof.

11. Default by the Customer

- a) If the customer shall fail to pay the purchase price or any delivery or other charges in full in accordance with this contract or if it shall at any time come to the notice of the Company that the customer is or is likely to be unable to meet its obligations in full as they fall due, the Company shall have the right forthwith to terminate any contract then existing with the customer and upon written notice of such termination being posted by the Company to the customer's last known address, this contract shall be deemed to have been terminated but without prejudice to any other rights or remedies available to the Company.
- b) Upon any termination of this contract pursuant to sub-clause (a) above the Company shall (without prejudice to any other rights or remedies available to it) be entitled if it so elects to repossess at the customers expense any goods which may have been delivered to but not paid for by the customer.
- c) Notwithstanding the provisions of sub-clause (b) above and of clause 10 hereof the Company may upon any termination of this contract pursuant to sub-clause (a) above elect to treat the property in any goods which have been partly or wholly completed as having passed to the customer irrespective of whether such goods have been delivered, and in such case the Company shall be entitled (without prejudice to any other rights or remedies available to it) to recover from the customer the whole or any unpaid part of the purchase price and any other charges.

12. Customer's Property

Any materials or other property of the customer supplied to the Company will be held by the Company at the customer's risk. The Company accepts no responsibility for imperfect work caused by defects in or unsuitability of materials so supplied.

13. Patents

The customer shall be exclusively responsible for ascertaining that the goods ordered from the Company to a design supplied or specified by the customer do not infringe any letters patent, registered designs or any other rights vested in a third party and the customer shall fully indemnify the Company against all claims, damages, penalties, costs and expenses to which the Company may become liable as a result of any such infringement. The Purchaser shall similarly be exclusively responsible for ascertaining that all goods purchased from or supplied by us for use or resale by the Purchaser at home or abroad do not infringe any letters patent, registered designs, copyrights or any other rights vested in any third party in any country or territory. We accept no responsibility or liability for any such infringement. Any damages, penalties, costs, expenses and liabilities arising or resulting from such infringement shall be wholly and exclusively the responsibility and liability of the Purchaser.

14. Tooling

Any tooling or other plant or equipment made or purchased by the Company to enable an order to be executed shall remain the property of the Company notwithstanding that all or part of the cost thereof may be charged to the customer.

15. Exports

In the event that goods are to be exported by the customer it shall be the responsibility of the customer to arrange such packaging inspection and examination of the goods as it considers necessary at the Company's works. The Company accepts no responsibility for any weights and measures of the goods given to the customer as estimates.

16. Quotations and Price Variations

- a) Any tender or quotation is based on prices ruling at the date of quotation, and is subject to revision for errors and omissions and to alteration without notice. Notwithstanding any quotation the contract price shall be the price ruling at the date when the order is received and shall be subject to increase between that date and the date of delivery in respect of the matters referred to in clause 16(c) hereof.
- b) All contract prices are based on current costs affecting the costs of the Company of purchasing, manufacturing, delivering or installing the goods. If there is any increase in any such costs arising after the date the order is received the Company shall have the right to increase the contract price accordingly as the case may be.
- c) In addition the Company shall have the right to increase the contract price to take into account any increase in costs arising after the date the order is received as a result of:
 - i) any alterations in the customers requirements
 - ii) the customers instructions or lack of instructions
 - iii) unsuitable or unprepared site or inadequate access or lack of services
 - iv) any interruptions, delays, overtime work, mistakes or any other cause for which the Company is not directly responsible
 - v) any increase in any tax duty or levy imposed on goods or services or affecting the contract price in any manner including VAT.
- d) All quotations and tenders are subject to the availability of goods and materials and the Company shall have the right to substitute other goods of similar or equivalent nature and to vary the Contract price accordingly.
- e) The Company may incorporate in any subcontract made for the purpose of performing its obligations under this contract, provisions which are mutatis mutandis the same as the provisions of this clause and in such event the addition or deduction to be made in accordance with any subcontract shall also be made under this contract as if the increase or decrease of costs to the subcontractor had been directly incurred by the Company.

17. Cancellation of Orders

In the event of such cancellation the customer shall remain liable to pay the Company the full contract price. The Company shall refund to the customer the proceeds (if any) of any subsequent sale by the Company of the goods which were the subject of the order. The Company shall be under no obligation to the customer with regard to the manner or timing of such resale or the price obtained.

18. Business Sales

The customer acknowledges that he is buying the goods in the course of a business carried on by him and that his attention has been drawn to the existence and extent of such of these conditions as exclude or modify any conditions or warranties implied by law.

19. Maintenance Contracts

The Company reserves the right to terminate a maintenance contract at three months notice. If the Company exercises this right, it will refund the customer the unexpired portion of the maintenance contract ie. from the end of the three months notice, on a pro-rata basis.

20. Waiver

Any express or implied waiver by the Company of any term or condition of this contract or of any breach or default by the customer may be terminated by the Company at any time. No such waiver shall constitute a continuing waiver nor shall it prevent the Company from acting upon that or any subsequent breach or default or from enforcing any of the provisions of this contract.

21. Applicable Law

This contract and these conditions shall be construed according to and governed by the law of England.

22. General

The customer agrees to indemnify and keep indemnified the Company against all reasonable fees, costs and other expenses incurred by the Company in enforcing this contract or any of its terms or provisions. All paragraph and other headings contained in these conditions are for reference purposes only and shall not in any way affect the meaning of interpretation of this contract.

(end)