



## Supplementary Terms and Conditions for the Sale of Goods

Ingenious shall sell Goods set out on the Order to the Client on the terms and conditions set out in the General Terms and Conditions and these Supplementary Terms.

### **1. PRICES AND CHARGES**

- 1.1 The Charges for Goods is set out in the Order and are subject to the provisions of clause 9 of the General Terms and Conditions and this clause 1.
- 1.2 Ingenious shall at any time be entitled to change the Charges for Goods set out in the Order:
  - 1.2.1 Should the Client alter its specification or instructions after the date of Order or Ingenious otherwise has to alter, modify or otherwise carry out work on any Goods;
  - 1.2.2 Should there be any increase in the cost to Ingenious of purchasing any Goods for any reason including foreign or currency fluctuations, alterations in any taxes or duties, variations in the cost of Ingenious's materials, components, labour, transport and any other reason beyond the reasonable control of Ingenious.
- 1.3 All prices quoted by Ingenious are exclusive of Value Added Tax and other taxes, duties and other impositions and the Client shall pay all taxes, duties and other governmental charges (where applicable) in respect of the Goods at the rate ruling at the tax point, together with any transport costs for delivery of the Goods to the Client as set out on the Order.

### **2. PAYMENT**

- 2.1 Notwithstanding the provisions of sub-clause 9.3 of the General Terms and Conditions, Ingenious shall be entitled at its sole discretion, to request payment or part payment for Goods prior to the despatch of such Goods to the Client.
- 2.2 If Ingenious allows provisional credit or extends credit in respect of any part of the Goods, it shall be without prejudice to its right to refuse to give up possession of any other part of the Goods, save against payment.
- 2.3 Where the Goods are to be supplied or payment theretofore is to be made by instalments the failure of the Client to pay any of the instalments in due time shall entitle Ingenious to:
  - 2.3.1 Demand that all amounts for all outstanding instalments are immediately paid;
  - 2.3.2 Treat such failure as repudiation of the whole Agreement by the Client and to recover any damages incurred as a result of such breach of this Agreement.
- 2.4 If the Client is unable to accept delivery of the Goods on the agreed delivery date, Ingenious shall be entitled to invoice the Client as if such delivery had taken place.

### **3. WARRANTY**

- 3.1 With respect to Goods that are manufactured by a third party and sold by Ingenious:
  - 3.1.1 Ingenious's only warranty to the Client is that the Goods shall conform substantially to the description provided by Ingenious and are free of any rightful claims of their manufacturer.
  - 3.1.2 To the extent that any warranties extended to Ingenious by their manufacturer are transferable, Ingenious shall transfer such warranties to the Client.
  - 3.1.3 Ingenious cannot pass onto the Client any greater warranty in respect of the Goods than that which has been conferred on Ingenious under the terms of Ingenious's agreement with its own supplier.

- 3.2 Ingenious's only warranty in respect of Software provided under this Agreement shall be strictly limited to the medium of storage and Ingenious shall not be liable in respect of any loss or damage occasioned to the Software itself or consequential upon the use of the Software for any purpose.
- 3.3 The warranty contained in sub clauses 3.1 and 3.2 are given in lieu of and shall be deemed to exclude all other implied warranties and conditions, except for the terms implied by section 12 of the Sale of Goods Act 1979, and whether arising by common law, statute or otherwise.
- 3.4 If the supplied Goods are Defective or become Defective during the period of any warranty extended to the Client under the provisions of sub-clause 3.1.2 and the manufacturer agrees to accept a claim under its warranty provisions, the Client shall promptly return the Goods to the location specified by Ingenious for the purpose of repair under such warranty.

#### **4. TECHNICAL INFORMATION**

- 4.1 Ingenious shall be under no liability whatsoever resulting from or arising out of or in connection with or in relation to any statement made by any of its employees, servants or agents or contained in any document in relation to this Agreement unless Ingenious gives notice in writing to the Client that it intends to rely on any such statement or document.
- 4.2 Without prejudice to the generality of sub-clause 4.1:
  - 4.2.1 Any description contained in any catalogue, sample price lists or other advertising material supplied by Ingenious is intended merely to present a general picture of the Goods sold by Ingenious and shall not form a representation to the Client or become part of any contract for sale of Goods made between Ingenious and the Client;
  - 4.2.2 Ingenious makes no warranty express or implied concerning any advice or recommendation made to it by the Client.

#### **5. DELIVERY**

- 5.1 If Goods are to be delivered by Ingenious to the Client, such Goods shall be delivered to the location set out in the Order. Unless it is otherwise agreed in writing, such Goods shall be delivered by any means chosen by Ingenious and Ingenious shall not be under any obligation to provide personnel, plant or power to assist the unloading of the Goods.
- 5.2 If the Client is unable to take delivery of the Goods, Ingenious may at its sole discretion store the Goods at its risk, but may be entitled to charge the Client its reasonable costs for doing so.
- 5.3 Ingenious shall make reasonable endeavours to avoid delay, however Ingenious will not accept any liability for any direct or indirect loss which may be caused by delayed delivery whether brought about by a cause beyond the control of Ingenious or not.
- 5.4 Ingenious shall be entitled to deliver the Goods in one or more consignments unless otherwise agreed.
- 5.5 The Client shall inspect the Goods immediately on delivery thereof and shall within two Working Days from such delivery give Ingenious notice of any claim that the Goods are Defective. If the Client fails to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the Order; and
  - 5.5.1 If the Client establishes to Ingenious's reasonable satisfaction that the Goods are not in accordance with the Order or are so Defective, Ingenious may elect to repair the Goods or to replace the Goods or to refund the purchase price against the return of the Goods.
- 5.6 If the Goods are lost or damaged in transit the Client shall notify both Ingenious and the carrier of the loss or damage within two Working Days of the delivery (or anticipated delivery date, as may be the case).
- 5.7 Ingenious shall not be responsible for the installation of Goods at the Client's site under the terms of these Supplementary Terms, unless otherwise agreed in writing.

#### **6. RETURNS**

- 6.1 Goods supplied to the Client under the terms of this Agreement which the Client wishes to return for reasons other than those set out in sub-clause 3.4 cannot be returned without Ingenious's prior written consent.
- 6.2 The Client shall be responsible for delivering the Goods to Ingenious's premises and the Client shall be liable for all packaging and carriage costs.

- 6.3 All Goods returned to Ingenious shall be returned in the same condition and packaging in which such was originally delivered to the Client.
- 6.4 Ingenious shall be entitled to charge the Client a handling / re-stocking charge.

## **7. PASSING OF RISK**

- 7.1 The Goods shall be at the Client's risk from the time of delivery of the Goods to the Client or a third party identified by the Client and if the Client returns Goods to Ingenious, until the time of delivery back to Ingenious.
- 7.2 Where Goods are to be collected by the Client, or by the Client's carrier the Goods shall be at the Client's risk from the time of collection of the Goods.
- 7.3 Ingenious shall not be liable for any loss of any kind to the Client arising from any damage to the Goods occurring after the risk has passed to the Client howsoever caused, nor shall any liability of the Client to Ingenious be diminished or extinguished by such loss.

## **8. RETENTION OF TITLE**

- 8.1 The Goods agreed to be sold shall remain the property of Ingenious until all sums due to Ingenious have been paid in full.
- 8.2 Until such time as the Client becomes the owner of the Goods, without prejudice to any of its other rights, Ingenious may recover and resell the Goods supplied and its servants or agents may enter upon the Client's premises for that purpose on the occurrence of any of the events contemplated in sub-clauses 11.1.1(a) or 11.1.2(a) to 11.1.2(f) of the General Terms and Conditions; or
  - 8.2.1 Ingenious has reasonable grounds to believe that the Client is insolvent or that Ingenious's right to receive payment or its interest in the Goods is or is likely to be in jeopardy.
- 8.3 Until title in the Goods has passed to the Client hereunder the Client shall not:
  - 8.3.1 Pledge the Goods or documents, or allow any credit to arise thereon; or
  - 8.3.2 Dispose of the Goods or documents or any interest therein; or
  - 8.3.3 Hold itself out as Ingenious's agent in respect of the Goods.
- 8.4 Until such times as the Client becomes the owner of the Goods supplied to it, the Client will:
  - 8.4.1 Keep the Goods properly insured for not less than the price, gross of any applicable discount, which is set out on the Order.
  - 8.4.2 Store the Goods on its premises separately from its own goods in a manner which makes it readily identifiable as the Goods.

## **9. USE OF GOODS**

- 9.1 The Client shall bring to the attention of all persons using the Goods all of Ingenious's instructions and recommendations for the use thereof.
- 9.2 The Client shall not remove or deface any label affixed to the Goods referring any user thereof to Ingenious's instructions and or recommendations for use.
- 9.3 If any item comprised in the Goods is resold by the Client, the Client shall bring to the attention of its purchaser all of Ingenious's or the manufacturer's instructions and recommendations for use of the Goods.
- 9.4 On such resale as contemplated in sub-clause 8.3 the Client shall exact an enforceable undertaking from its purchaser not to remove any label affixed to the Goods which refers any user thereof to Ingenious's or the manufacturer's instructions and recommendations for use of the Goods and that such purchaser shall take such steps as are necessary to ensure that there will be available in connection with the use of the Goods adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health; and
  - 9.4.1 Subject to the provisions of sub-clause 10.13 of the General Terms and Conditions, the Client shall indemnify Ingenious against all third-party claims which arise in connection with the Client's breach of the terms of sub-clauses 8.3 and 8.4.
- 9.5 The Client shall be solely responsible for the disposal of the Goods and packaging; and

- 9.5.1 Shall be solely responsible for its obligations under the Waste Electrical and Electronic Equipment Directive (2012/19/EU), the Packaging Waste Directive (94/62/EC) and Batteries Directive (2006/66/EC), as applicable.

## **10. CANCELLATION**

- 10.1 No cancellation, alteration, amendment or postponement of delivery of all or part of its order by the Client shall be effective unless communicated in writing to Ingenious and agreed in writing by Ingenious.
- 10.2 Upon any such cancellation Ingenious shall be entitled to be paid the price of the Goods purchased by Ingenious or supplied to the date of the cancellation and the Client shall take over and pay for at the current price such materials as have been allocated by Ingenious to the Order.

## **11. COMPUTER SOFTWARE**

- 11.1 All Software shall be supplied to the Client for use under the terms of the licence granted by the owner of the Software to the Client and all intellectual property and title and the rights in the Software shall remain vested in any third party owning such property, title and rights.

## **12. EXCLUSION OF LIABILITY**

- 12.1 Save as expressly set out in these Supplementary Terms the Goods are not supplied with or subject to any condition, warranty or other term whether express or implied unless specifically stated by Ingenious in writing and except for the terms implied by of the Sale of Goods Act 1979.
- 12.2 In no circumstances except under clause 3 above shall Ingenious's liability whether in contract or in respect of any negligence or otherwise to the Client arising under or out of or in connection with any contract for the supply of Goods exceed the cost to the Client in replacing or repairing the said Goods. Except in any case where a claim is made under section 12 of the Sale of Goods Act 1979, Ingenious shall not be under any liability for any cost or expenses incurred by the Client in repairing or replacing such Goods unless Ingenious is first afforded a reasonable opportunity of repairing or replacing them provided that the Client shall be entitled to effect such repairs or replacements before affording such an opportunity as may be reasonably necessary to prevent any consequential loss or damage to the Client.
- 12.3 Subject to the provisions of sub-clause 10.13 of the General Terms and Conditions, the Client shall indemnify Ingenious and keep Ingenious indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection herewith arising from the condition or use of the Goods in the event and to the extent of that damage, injury or loss shall have been occasioned partly or wholly by acts, omissions or negligence of the Client, its servants or agents and any material breach by the Client of its obligations to Ingenious hereunder.

## **13. PATENTS, TRADEMARKS, ETC**

- 13.1 The Goods are sold subject to the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; and the Client will in this respect accept such title to the Goods as Ingenious may have.

## **14. TERMINATION**

- 14.1 If the Client fails to take and pay for Goods sold in accordance with this Agreement Ingenious shall be entitled to treat the Agreement as repudiated by the Client. Without prejudice to Ingenious's right to recover from the Client by way of damages any loss or expense which Ingenious may suffer or incur by reason of the Client's default, Ingenious shall be entitled to dispose of the Goods as it shall think fit and shall not be under any liability to account to the Client for the price received therefore or otherwise.
- 14.2 Ingenious shall be entitled immediately to terminate the Agreement at any time upon occurrence of any of the events contemplated in sub-clauses 11.1.1(a) or 11.1.2(a) to 11.1.2(f) of the General Terms and Conditions. Upon any such termination Ingenious shall be entitled to be paid the price of Goods purchased by Ingenious or supplied to the Client prior to the date of termination.

## **15. FINANCE**

If the Client requests Ingenious to arrange finance for the purchase of Goods on the Client's behalf, the Client agrees that:

- 15.1.1 Ingenious will act as an agent for the Client and for the avoidance of doubt, not for the finance provider;
- 15.1.2 If Ingenious is unable to procure finance terms or is unable to procure finance terms that are acceptable to the Client, this Agreement shall be terminated and any deposit made by the Client shall be returned by Ingenious and the Client will have no further liability under the terms of this Agreement;
- 15.1.3 If the Client fails to provide third-party indemnities that are required by the finance provider, such failure will be deemed to be a breach of this Agreement and the Agreement will be terminated forthwith and Ingenious shall be entitled to retain any deposit made by the Client;
- 15.1.4 It is a condition of this Agreement that regardless of any provisions made by the finance provider in its contracts, the Client shall finalise the finance arrangement immediately upon Ingenious's delivery of the Goods to the Client's site;
- 15.1.5 If the Client fails to finalise the finance agreement or fails to commence payment under the terms of the finance agreement, the Client shall forthwith become liable for the full cost of the Goods supplied under the terms of this Agreement.