

STEPHEN JAMES TECHNOLOGIES LIMITED - TERMS AND CONDITIONS OF SALE (ISSUE 1)

1 INTERPRETATION

- 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
 - "Goods" means the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these conditions
 - "Seller" means Stephen James Technologies Limited registered in England with registered number 4082347
 - "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
 - "Writing" includes letter, e-mail, telex, cable, facsimile transmission 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

2 BASIS OF THE SALE

- 2.1 The Seller shall sell the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted, or purported to be accepted, or any such order is made or purported to be made, by the Buyer
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller
- 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 the 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 recommendation 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 recommendation which is not so confirmed
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance or 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

3 ORDERS AND SPECIFICATIONS

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative
- 3.2 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
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). In the event of a conflict between the two the Seller's quotation will prevail
- 3.4 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 for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification
- 3.5 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 the quality or performance
- 3.6 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 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 material used), damages, charges and expenses incurred by the Seller as a result of cancellation including any consequential loss and (by way of example and without limitation) any damages which the Seller must pay to suppliers with whom the Seller has contracted in furtherance of the performance of the contract
- 3.7 Without prejudice to the generality of the foregoing any particular purpose for which the Buyer proposes to use the Goods shall be deemed not to be known by or have been made known to the Seller unless specifically recorded in a schedule signed by one of the Seller's directors. The Buyer hereby acknowledges that any purpose stated in such schedule shall be deemed to have been specified by the Buyer

4 PRICE

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 60 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer
- 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, material or other costs of manufacture), any changes 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 quotation 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 on an ex works the Seller basis, 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 is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller and any other applicable tax which is from time to time in force

5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or 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
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment shall only be issued upon request
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 5.3.2 demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer;
 - 5.3.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.3.4 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of four (4) per cent per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)
- 5.4 The Seller may from time to time notify the Buyer of a credit limit and without prejudice to the remainder of these Conditions shall be entitled to take one of the following steps whenever the Buyer has exceeded the credit limit notified to it:
- 5.4.1 to revoke its acceptance of any order placed by the Buyer;
 - 5.4.2 to require the Buyer to pay in advance of delivery for outstanding orders for Goods notwithstanding any credit terms agreed between the parties
 - 5.4.3 to suspend deliveries of Goods
- 5.5 The credit limit referred to in Condition 5.4 may be adjusted up or down or withdrawn as the Seller may consider reasonable in the circumstances

6 EXPORT TERMS

- 6.1 Unless otherwise agreed in writing between the Buyer and the Seller, the provisions of Clause 4.3 and Clause 11 shall apply
- 6.2 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

- 6.3 The Buyer shall be responsible for arranging for 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
- 6.4 Unless otherwise agreed in writing between the Buyer and the Seller, payment for the Goods shall be in pound sterling by Banker's Draft or Telegraphic Transfer direct to the Seller's bank account (details on request). The Goods shall only be despatched from the Seller's premises on receipt of the payment in full and notification of its clearance

7 INSOLVENCY OF BUYER

- 7.1 This clause applies if:
- 7.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of a bona-fide solvent amalgamation or reconstruction); or
 - 7.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 7.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 7.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly
- 7.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and if any of the Goods have not been delivered the Seller may 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

8 RISK

- 8.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 8.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection;
 - 8.1.2 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
- 8.2 The Buyer shall insure the Goods from the date of delivery to him until their title has passed to him and the Seller shall be entitled to call for details of the insurance policy
- 8.3 If the Buyer shall not insure the Goods or shall fail to supply details of its policy on demand to the Seller then the Buyer shall reimburse the Seller for the cost of any insurance which the Seller may reasonably arrange in respect of any of the Goods during the whole or any part of the period from the date of the Seller's delivery of the Goods until the date of payment to the Seller of the price

9 TITLE RETENTION

- 9.1 Until the purchase price of the Goods comprised in this or any other Contract between the Seller and the Buyer and all other sums whatsoever which are or shall become outstanding from the Buyer to the Seller shall have been paid or satisfied in full (and if by cheque, then only upon clearance):
- 9.1.1 The property in the Goods remains vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein)
 - 9.1.2 The Buyer shall store the Goods in such a way that they can be readily identified as being the Seller's property
 - 9.1.3 The Buyer shall on request inform the Seller of the precise location of each item of the Goods identified where applicable by its serial number, by supplying the Seller at the Buyer's expense within seven days of the Seller's request with a written schedule of the said locations
 - 9.1.4 The Buyer may sell the Goods in the normal course of its business and may pass good title to its customer being a bona-fide purchaser for value without notice of the Seller's rights on the following conditions:
 - 9.1.4.1 The Seller shall be entitled, immediately as a result of its ownership of the Goods, to the beneficial ownership of the proceeds of such sale which the Buyer shall accordingly hold as fiduciary for the Seller;
 - 9.1.4.2 The Buyer shall account to the Seller on demand with the said proceeds of sale provided that no such demand shall be made by the Seller in the absence of its having reasonable cause to believe that the Buyer might default in making payment for the Goods on the terms contained therein;
 - 9.1.4.3 The Seller shall be entitled to make a claim directly against the Buyer's customer for any purchase monies unpaid by such customer provided that no such claim shall be made by the Seller in the absence of its having reasonable cause to believe that the Buyer might default in making payment for the Goods on the terms contained herein;
 - 9.1.4.4 The Seller may at any time revoke the Buyer's said power of sale in the circumstances set out in Clause 7 of these Conditions;
 - 9.1.4.5 The Buyer shall notify the Seller without delay of any attachment of the Goods or any actions by third parties which might infringe the Seller's title to the Goods
- 9.1.5 Upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods or their proceeds of sale and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession
- 9.1.6 Until title in the Goods has passed to the Buyer, the Buyer shall not purport to be the owner of the Goods
- 9.2 Nothing in these Conditions shall:
- 9.2.1 entitle the Buyer to return the Goods or delay payment thereof;
 - 9.2.2 constitute or be deemed to have constituted the Buyer as the Seller's agent; or
 - 9.2.3 render the Seller liable to any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the Goods; or
 - 9.2.4 prevent the seller from maintaining an action for the price notwithstanding that the property in the Goods may not have passed to the Buyer

10 LIEN

The Seller retains a general lien on any of the Buyer's equipment or materials in its possession for any unpaid balance the Buyer may owe to the Seller. The Seller shall be entitled to sell such equipment or materials in the event that payment is not made in full within 28 days of notice given to the Buyer by the Seller of its exercise of the lien. The proceeds of sale may be taken by the Seller for reimbursement of the expense of exercise of the lien and the sale, and payment of the said balance, and the Seller shall account for any surplus

11 DELIVERY

- 11.1 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
- 11.2 Where delivery of the Goods shall be made by the Seller the Seller reserves the right to charge the Buyer a reasonable delivery charge
- 11.3 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. The Goods may be delivered by the Seller in advance of the quoted delivery date (and by one or more deliveries) upon giving reasonable notice to the Buyer
- 11.4 Where the Goods are to be delivered in instalment, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated
- 11.5 Where the Goods are to be delivered by the Seller in bulk the Seller reserves the right to deliver up to 10% more or 10% less than the quantity ordered. This shall not cause an alteration in the agreed price net give the Buyer the right to reject the delivery
- 11.6 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
- 11.7 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 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:
- 11.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;
 - 11.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage insurance 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

12 RETURNS

Goods correctly supplied may not be returned without the Seller's written agreement. Goods so returned must be consigned carriage paid and accompanied by a packing note stating the Seller's invoice number and date thereof together with the reason for return. The Seller reserves the right to levy a handling charge

13 WARRANTIES AND LIABILITY

- 13.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with the specifications (if any) referred to in Condition 3.3 at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of their delivery or six months from the date of their initial use, whichever is the first to expire
- 13.2 The above warranty is given by the Seller subject to the following conditions:
- 13.2.1 the Seller shall have no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 13.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), accidents which the Goods cannot reasonably be expected to withstand, misuse or inadequate storage or alteration or repair of the Goods without the Seller's approval;
 - 13.2.3 the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - 13.2.4 the above warranty shall not extend to parts, materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the third party manufacturer or supplier to the Seller
- 13.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions relating to quality and/or fitness for purpose of the Goods or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 13.4 The Buyer shall check the Goods thoroughly forthwith upon delivery or as soon as reasonably practicable hereafter and accept the Goods as delivered by the Buyer which is based any defect in the quality or condition of the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days of the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defects 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 on the basis of any defect which was apparent on reasonable inspection on delivery and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract. In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them
- 13.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller by the Buyer, the Seller shall be entitled to repair or replace the Goods (or the part in question) free of charge or at the Seller's sole discretion referred to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer whatsoever
- 13.6 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 (unless fraudulent) or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any indirect special or consequential loss or damage (whether for loss of profit or otherwise) or for any 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 or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions
- 13.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay of failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:
- 13.7.1 Act of God, explosion, flood, tempest, fire or accident;
 - 13.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 13.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 13.7.4 import or export regulations or embargoes;
 - 13.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 13.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 13.7.7 power failure or breakdown in machinery;
 - 13.7.8 failure by the Buyer to correctly store, protect, handle or otherwise deal with the Goods

14 INTELLECTUAL PROPERTY

- 14.1 The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programmes or any other material prepared by the Seller whether readable by humans or by machines shall belong to the Seller absolutely and they shall not be reproduced or disclosed or used in their original or translated form by the Buyer without the Seller's written consent for any purpose other than that for which they were furnished
- 14.2 The Seller accepts no responsibility for the accuracy of drawings, designs or specifications supplied by the Buyer. The Buyer shall indemnify the Seller against all claims whatsoever for damages and costs and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions expressed or implied and the Buyer will indemnify the Seller against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Seller in reference to any such claim. The Seller shall extend to any amount paid on a lawyer's advice in respect of any such claim

15 INDEMNITY

- 15.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 15.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
 - 15.1.2 the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;
 - 15.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
 - 15.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
 - 15.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim;
 - 15.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause

16 GENERAL

- 16.1 The Seller reserves the right to sub-contract the fulfillment of the contract (including any installation) or any part thereof
- 16.2 The Buyer shall not assign any rights under this agreement without the prior consent in writing of one of the Seller's directors
- 16.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business
- 16.4 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision
- 16.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby
- 16.6 The Contract shall be governed by the laws of England and the parties shall submit to the sole jurisdiction of the English courts