

## TERMS AND CONDITIONS OF SALE

### 1. Definitions

- 1.1 The term "seller" shall mean 'Actia (UK) Ltd' and (or its associated companies).
- 1.2 The term "buyer" shall mean the person, firm or company so named in the purchase order.
- 1.3 The term "quotation" shall mean the tender or quotation issued by the seller for the supply of the goods including these conditions, the specification, drawings or other documents annexed by the supplier to the quotation.
- 1.4 The term "purchase order" shall mean the purchase order issued by the buyer to the supplier for the purchase of the goods.
- 1.5 The term "goods" shall mean the goods to be supplied by the supplier as identified in the quotation.
- 1.6 "The contract" shall mean the contract between the supplier and the buyer consisting of the seller's quotation, these conditions of sale and the purchase order accepting the quotation, but not any terms and conditions of purchase, other than these conditions, incorporated in or referred to in the purchase order.
- 1.7 The term "date for delivery" shall mean the firm date for delivery, if any, stated as such in the quotation.
- 1.8 The term "contract price" shall mean the sum stated in the quotation to be paid by the buyer to the seller for the supply of goods together with such other sums as may be payable to the supplier under these conditions of sale.

### 2. General

- 2.1 These conditions of sale and the quotation supersede any other terms and conditions, including any terms or conditions, or descriptions, or statements as to the delivery, quality or performance of the goods or their suitability for any purpose appearing in any advertisements, catalogues, or other literature relating to the goods and override and exclude other terms and conditions, descriptions and statements as to quality and performance or suitability of the goods stipulated or referred to by the buyer whether in the purchase order or otherwise.
- 2.2 No representative or agent of the seller has any authority to agree any terms or make any representations that are inconsistent with these conditions or the quotation. The seller will not be bound by any statements made by any person purporting to act on the seller's behalf as to these conditions or the quotation or any statements as to the delivery, quality, performance or suitability of the goods unless any such statement is specifically confirmed in writing by a duly authorised officer of the seller and annexed to the contract.

### 3. Specification and Description Sample and Standard

- 3.1 The description of the goods given in any advertisement, catalogue or other literature is for information purposes only and does not constitute a term of the contract.
- 3.2 The seller undertakes that the goods will conform with:
- 3.2.1 The provisions of the quotation (except in minor respects which do not materially affect the usage of the goods). The seller reserves the right to change and improve the specification of the goods in line with its policy of progressive development provided that any substituted materials shall be of the same or better quality than those specified in the quotation and that any such change will not materially affect the usage of the goods.
- 3.2.2 The seller's normal standards of manufacture.
- 3.2.3 The requirements of any legislation in force at the time of the submission of the quotation.

### 4. Quality and Fitness for Purpose

- 4.1 The goods shall be in accordance with the quality specified in the seller's quotation and if no quality is specified, with the normal industrial quality for the type of goods in question at the contract price.
- 4.2 If the buyer has specified expressly that the goods shall be suitable for a particular purpose and the seller has agreed in the quotation expressly to supply goods suitable for that purpose, then the goods shall be so suitable within the limits specified by the supplier in his quotation except in minor respects which do not materially affect the purpose for which the goods have been supplied.

### 5. Delivery

- 5.1 The seller undertakes as a warranty and not as a condition of the contract that if a firm delivery date or period has been stated in the quotation that the seller will deliver the goods by such date or within such period or any extended date or period as provided for under clause 13.
- 5.2 The seller shall deliver the goods to the delivery point stated in the quotation carriage paid, provided that if in accordance with the quotation the goods are to be given to a carrier for onward transmission to the buyer, then delivery of the goods to the carrier shall constitute delivery to the buyer.

### 6. Title

- 6.1 The title in the goods shall not pass to the buyer until payment has been received by the seller in full for the goods and for any other goods supplied by the seller or any associated company of the seller to the buyer.
- 6.2 For the purpose of this clause the buyer undertakes that until the buyer has made payment in accordance with sub-clause 6.1:
- 6.2.1 not to remove, deface or cover up any identification marks on the goods or marks indicating that the goods are the property of the seller;
- 6.2.2 to store the goods separately from those belonging to the buyer or others;
- 6.2.3 to allow the seller unrestricted access to the buyer's Works or other place where the goods are stored for the purpose of removal of the goods.

### 7. Intellectual Property Rights

Actia UK retains all property rights in and to all specifications, designs and engineering details relating to the Goods, all computer software designed by Actia UK, all manuals marked as proprietary to Actia UK, and all discoveries, inventions, patents, copyright, registered designs and other intellectual property rights in the goods. The Buyer acknowledges that any contract for the sale and purchases of the Goods shall not operate so as to transfer or vest in the Buyer any patent, copyright, registered designs, and other intellectual property right in the Goods whatsoever.

### 8. Confidentiality

- 8.1 The Buyer shall not use or divulge or communicate to any person (other than as permitted or provided by these Terms or with written authority of Actia UK or as may be required by law) any confidential information concerning the goods or other products, customers, business, accounts, financial or contractual arrangements or other dealings, transactions or affairs of Actia UK which may come to the Buyers knowledge as a result of the sale or supply of the Goods to the Buyer and the Buyer shall use its best endeavours to prevent the unauthorised publication or disclosure of any such information or documents and to ensure that any person to whom such information or documents are disclosed by the Buyer is aware that the same is confidential to Actia UK.
- 8.2 The Buyer shall ensure that its employees, servants and agents are aware of and comply with the confidentiality and non-disclosure provisions contained herein. In the event of any breach of confidence by any of the Buyers employees, servants or agents the Buyer shall promptly notify Actia UK, give Actia UK all reasonable assistance in connection with any proceedings which Actia may institute against any such employees, servants or agents and the Buyer shall indemnify Actia UK against all loss or damage which Actia UK may sustain or incur as a result of any such breach of confidence.
- 8.3 This clause shall survive the termination of any contract incorporating these terms but the restrictions contained in sub-clause 8.1 above shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure by the Buyer or its employees, servants or agents.

### 9. Carriage & Passing of Risk

- 9.1 The risk in the goods shall pass to the buyer on delivery to the carrier. The Buyer hereby accepts the general conditions of any carrier employed.
- 9.2 If delivery is to be made to a carrier for onward transmission to the buyer, then unless otherwise instructed by the buyer, the seller will arrange for the benefit of the buyer, insurance of the goods on the basis of carrier's risk. The premium for such insurance shall be added to the contract price and paid for by the buyer.
- 9.3 Neither the carrier nor Actia (UK) shall be liable for any loss or damage to any goods in transit or for any shortage on delivery unless notice in writing is given to Actia (UK) and to the carrier within 3 days of delivery of the goods or, in the case of total loss of the goods, notice in writing is given to Actia (UK) and to the carrier within 14 days from the date of despatch and the Buyer takes such other steps including, where applicable, the giving of notice to the carrier concerned such shorter period as may be necessary to preserve any claim against the carrier.
- 9.4 Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Actia (UK) to deliver one or more of the instalments in accordance with these terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat these terms as a whole as repudiated.

### 10. Contract Price

- 10.1 The price stated in the quotation is based on the cost of production as at the date of the quotation. If because of any rise or fall in the cost of labour, materials, fuel or transport the cost to the seller of performing the contract shall be increased or reduced, the amount of such increase or reduction shall be added to or deducted from the contract price. No account shall be taken of any increase in cost which has been incurred by the seller because of any default by the seller.
- 10.2 If after the date of the quotation the cost to the seller of performing the contract is increased or reduced by reason of any change in the laws or regulations affecting the seller in the performance of the contract, including any changes in taxes, levies or National Insurance Contributions payable by the seller in respect of his workforce but excluding income tax, then the amount of such increase or reduction shall be added to or deducted from the contract price.

### 11. Payment Terms

- 11.1 The seller shall be entitled to invoice for the goods on delivery.
- 11.2 The buyer shall pay the seller's invoice within 30 days from the date of the invoice.
- 11.3 If the buyer fails to pay the seller's invoice on the due date then the seller shall be entitled to:
- 11.3.1 charge interest on the outstanding amount at the rate of 8% per annum above the base rate of the Bank of England ruling at the time when payment became due under clause 11.2 above accruing daily.
- 11.3.2 Decline to deliver any further goods to be supplied under this contract or any other purchase order placed by the buyer with the seller until payment has been received in full of any amount outstanding, and payment has been made by the buyer in advance for any goods not yet delivered without thereby incurring any liability whatsoever to the buyer;
- 11.3.3 Terminate the contract if the delay in payment exceeds 30 days.
- 11.4 Value Added Tax (VAT) where applicable shall be added to the contract price as a strictly nett extra charge.

### 12. Acceptance

- 12.1 The buyer shall inspect the goods immediately on their receipt and shall be deemed to have accepted the goods unless within 14 days after their receipt the buyer shall have notified the seller that the goods are rejected as having been found not to be in accordance with the contract.
- 12.2 If the buyer does so notify the seller to this effect then the seller shall be given the opportunity to inspect the goods, and if reasonably satisfied that the goods are not in accordance with the contract for a reason for which the seller is responsible, shall at its option repair or replace such goods.
- 12.3 At the seller's request the buyer shall return the goods which it considers not to be in accordance with the contract to the seller at the seller's expense. The seller shall be responsible for all costs involved in the repair or replacement of the goods and for their re-delivery to the buyer.
- 12.4 If the seller shall fail within a reasonable time to repair or replace the goods as required under sub-clause 2 above, the buyer shall have the right to purchase elsewhere replacement goods of the same or similar description and to recover from the seller:
- 12.4.1 any payments made by the buyer in respect of the rejected goods;
- 12.4.2 the difference between the price of the rejected goods and the price of the replacement goods.

- 12.5 The obligations of the seller under sub-clauses 12.2, 12.3 and 12.4 above shall be in full satisfaction of the seller's liability in respect of such goods, and the buyer shall not be entitled to claim damages for breach by the seller of any of its obligations whether under the contract or otherwise and whether for delay or performance.

### 13. Delayed Delivery

If the seller shall have included in the quotation a firm date or period for delivery then the following provisions of this clause shall take effect. Otherwise any date or period for delivery shall be considered as indicative only and not contractually binding on the seller.

- 13.1 The date for delivery shall only constitute a warranty and not a condition of the contract, time shall not be considered to be of the essence and the buyer shall not have the right to reject the goods or terminate the contract by reason of any delay in delivery.

- 13.2 If the seller is delayed in the performance of the contract by any act of default of the buyer, or any industrial dispute or any circumstances beyond the seller's reasonable control, then the date for delivery shall be extended by such period as may be reasonable.

### 14. Warranty

- 14.1 Actia (UK) warrants that at the date of delivery the goods will conform in all material respects to any written specification published or provided by Actia (UK) and that for the periods set out below in respect of each product type the goods will be free from defects in workmanship and materials under normal use and service. The Buyer must notify Actia (UK) of any defect in writing. Actia (UK)'s obligation under this warranty will not arise until the Buyer returns the defective goods at its own expense and risk to Actia (UK). Actia (UK)'s sole obligation under this warranty shall be at its option to replace or repair without charge such defective goods or component parts thereof. Any replacement of goods or component parts under this warranty shall not extend the period of the warranty beyond that of the goods or component parts so replaced.
- 14.2 Warranty Period: Goods listed in Actia UK's active price list in force at the date of sale, unless subject to a separate supply agreement, are subject to a 1 year warranty from delivery date.

- 14.3 With respect to any computer software comprised in the Goods supplied by Actia UK any defects arising after expiry of the warranty period referred to above should be notified to Actia UK in writing.

- 14.4 Actia UK shall not be liable hereunder: If the Goods alleged to be defective have been repaired or altered by any person other than Actia UK's designated personnel or authorised representative or other person approved by Actia UK in writing.

Where testing or examination by Actia UK reveals any alleged defect in the Goods to have been caused by the Buyers misuse, neglect, improper installation, failure to follow instructions (whether oral or in writing) or the supply by the Buyer of incorrect or inadequate instructions or information with regard to the design of any goods or to have been caused by any similar equipment to which the Goods are attached or in which the Goods are incorporated or any cause beyond the range of intended use of the Goods or by accident, fire or other hazard; or

Where the component parts alleged to be defective were not manufactured by Actia UK but were included in the Goods at the request of the Buyer, in which case the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier of such parts to Actia UK.

- 14.5 If the Goods are to be manufactured or any process is to be applied to them by Actia UK in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Actia UK against all loss, damages, costs and expenses awarded against or incurred by Actia UK in connection with or paid or agreed to be paid by Actia UK in settlement of any claim which results from Actia UK's use of the Buyers specification, including but not limited to any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person.

- 14.6 All expenses incurred by the seller in connection with placement of the defective goods, including all costs of transportation, shall be paid by the seller.

- 14.7 If the seller shall fail to so repair or replace the defective goods within a reasonable time of having been notified by the buyer, then the buyer shall be entitled to have the work of repair or replacement carried out by others, and the seller shall pay to the buyer the costs reasonably incurred by the buyer in so doing.

- 14.8 The seller's liability in respect of the defects in the goods shall be limited to those stated in this clause and subject to clause 2(1) of the **Unfair Contract Terms Act 1997**, the seller shall not be liable whether in contract or in tort, including but not limited to negligence, or by reason of breach of statutory duty or otherwise, for any damage or loss whatsoever suffered by the buyer arising out of or attributable to such defects.

### 15. Limitation of Liability

- 15.1 The obligations and the liabilities of the seller in respect of the description of the goods, the quality of the goods or their fitness for purpose are limited to those which are expressly stated in clause 12 and 14 above. All conditions, warranties and intermediate terms relating to the description of goods, their quality and their fitness for purpose implied by common law or by statute or otherwise are hereby excluded for the contract.
- 15.2 Neither party shall be liable to the other for any indirect or consequential loss or damage, loss of profit, loss of use or production or of contracts which the other may suffer arising out of any breach by a party of its obligations under the contract and whether the same be due to the negligence of that party or not.

### 16. Force Majeure

Neither party shall be liable to the other for its failure to perform any of its obligations under the contract to the extent that such failure is a result or circumstances beyond its reasonable control, provided that the other party is notified in writing of such circumstances by the party affected as soon as they become aware of their occurrence.

### 17. Set-Off

The buyer shall not be entitled to exercise any right of set-off or counter-claim.

### 18. Law

The contract shall in all respects be governed by and interpreted in accordance with English law.

### 19. Dispute Resolution

If any dispute or difference shall arise between the parties in connection with or arising out of the contract which cannot be settled amicably between the parties. Then either party shall give the other 14 days' written notice to such effect and such dispute or difference shall be referred to a single arbitrator agreed between the parties within 14 days of the date of the said written notice, or in default of agreement, as may be nominated by the President for the time being of the Chartered Institute of Arbitrators.