

## FarSite Communications Limited - Terms and Conditions of Sale

The following terms and conditions are the terms on which FarSite Communications Limited sells Goods and supersedes all other terms and conditions relating to the subject matter of these Conditions.

### 1 Interpretation

1.1 In these Conditions:

- 'Buyer' means the person who accepts a quotation of the Seller for the sale of 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 FarSite Communications Ltd
- '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.
- 'Order Confirmation' means the written document supplied by the Seller to the Buyer confirming the details of and acceptance of the Order.

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.

1.3 The heading in the Conditions are for convenience and shall not affect their interpretation.

### 2 Basis of the Sale

2.1 The Seller shall sell and the Buyer shall order the Goods in accordance with any valid current written quotation or the Seller's current published price list.

2.2 The Buyer shall purchase the Goods with a written order which is accepted by the Seller by issuing of an Order Confirmation subject to these Conditions. In the event of any conflict between these Conditions and terms and conditions on the quotation the terms and conditions of the quotation shall prevail.

2.3 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

### 3 Price and Payment

3.1 The price (exclusive of any applicable sales taxes or duties) for the Goods shall be the quoted price of the Seller and payment of the Price shall be made by the Buyer as shown on the invoice and within the payment period or payment schedule for the Goods as shown on the invoice.

3.2 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless agreed in writing between the Buyer and Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Sellers premises, the Buyer shall be liable to pay the Sellers charges for transport, packaging and insurance.

3.3 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.

3.4 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:

3.4.1 Cancel the Contract or suspend any further deliveries to the Buyer;

3.4.2 Demand payment of all outstanding balances whether or not due and / or cancel any outstanding orders from the Buyer;

3.4.3 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

3.4.4 Charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above Lloyds Bank PLC base rate from time to time until payment in full is made.

3.4.5 In the case of export orders payment shall be in pounds sterling (GBP) unless otherwise agreed in writing by the Seller's authorised representative.

### 4 Export Terms

4.1 In these Conditions 'incoterms' means the international rules for the interpretation of trade terms of the International Chambers of Commerce as in force at the date when the contract is made. Unless the context otherwise requires, any terms of expression which is defined in or given particular meaning by the provisions of incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of incoterms and these Conditions, the later shall prevail.

4.2 Where Goods are supplied for export from the United Kingdom, the provisions of this clause 4 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions.

4.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the Country or destination and for the payment of any duties thereon.

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- 4.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the sales of goods act 1979.

### 5 Orders and Specifications

- 5.1 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 written Order Confirmation.
- 5.2 The description and quantity of the Goods to be supplied shall be as set out in the Order Confirmation provided by the Seller to the Buyer.
- 5.3 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 Sellers specification, which do not materially affect their quality or performance.
- 5.4 No order which has been accepted by the Seller can 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, charge and expenses incurred by the Seller as a result of cancellation.
- 5.5 Where goods other than the Seller's standard products are made by the Seller to the Buyer's order, the Goods may vary in accordance with normal trade tolerances from the dimensions specified by the Buyer in the order and the Buyer shall not be entitled to make any claim against the Seller in respect of any such variations.
- 5.6 No withstanding that a sample of the Goods be exhibited to and inspected by the Buyer, such sample is so exhibited or inspected solely to enable the Buyer to judge the quality of the bulk, and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample, and subject to the normal variation between the bulk and the sample accepted by the trade.
- 5.7 USE OF SELLER'S GOODS IN SAFETY CRITICAL AND CERTAIN OTHER APPLICATIONS. Goods sold by Seller are not designed, intended or authorized for use in safety critical, security critical or other applications, including, but not limited to, transportation operating systems, in which the failure of such goods could reasonably be expected to result in personal injury, loss of life or severe property or environmental damage. Buyer acknowledges that use of Seller's goods in such product applications is understood to be fully at the risk of Buyer and that Buyer is responsible for verification and validation of the suitability of Seller's goods in such application. Buyer agrees that Seller is not liable, in whole or in part, for any claim or damage arising from use in such applications. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, damages losses, costs, expenses and liabilities arising out of or in connection with such use.

### 6 Delivery

- 6.1 The Seller shall deliver the Goods to the Buyer at the address of the Buyer as shown on the Order Confirmation on the date shown on the Confirmation using the Seller's shipping agent, unless it is agreed in writing that the Buyers shipping agent will be used to collect the Goods from the Seller.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and 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 upon reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments 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.
- 6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Sellers reasonable control or the Buyers fault and the Seller is according 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.
- 6.5 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 Buyers 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:
- 6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.5.2 Sell the Goods at the best price readily obtainable and (after deducting 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.

### 7 Warranty

- 7.1 The Seller hereby warrants to the Buyer that:
- 7.1.1 The Seller shall free of charge repair or, at Seller's option, replace defective Goods where the defects appear under proper use within the warranty period, PROVIDED THAT:
    - 7.1.1.1 Notice in writing of the defects complained of shall be given to the Seller upon their appearance, and
    - 7.1.1.2 Such defects may be found to the Seller's reasonable satisfaction to have arisen from the Seller's faulty design, workmanship or materials.
    - 7.1.1.3 Any such faulty Goods shall be returned to the Sellers premises at the Buyers expense.
  - 7.1.2 The warranty period is detailed in the documentation supplied as part of the Goods or such other period or periods as may be agreed in writing between the Seller and the Buyer whichever is the first to expire. The warranty period commences from the date of initial delivery of the Goods.

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- 7.1.3 Software is supplied under one or more licence agreements, warranty provided for the software is documented in the software licence agreement/s.
- 7.1.4 For the avoidance of doubt defects will not be regarded as having arisen solely from the Seller's faulty design, workmanship or materials in any of the following circumstances:
- 7.1.4.1 Where such defects arise from any drawing, design or specification supplied by the Buyer; or
- 7.1.4.2 Where such defects arise from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Seller's approval; or
- 7.1.4.3 Where such defects arise in parts material or equipment which have not been manufactured or designed by the Seller but have been purchased at the Buyer's request by the Seller from their designer and manufacturer or from some other third party (the third party supplier).
- 7.1.5 Any repaired or replaced Goods shall be redelivered to the Buyer free or charge to the original point of delivery but otherwise in accordance with and subject to these conditions.
- 7.1.6 Alternatively to condition 7.1.1, the seller shall be entitled at its absolute discretion to refund the price of all the defective Goods in the event that such price shall already have been paid by the Buyer to the Seller, or, if such price has not been paid, to relieve the Buyer of all obligations to pay the sum by the issue of a credit note in favour of the Buyer in the amount of such price.
- 7.2 The Guarantee is provided by the Seller free of charge to the Buyer.
- 7.3 The Seller's liability under this condition shall be to the exclusion of all other liability to the Buyer whether contractual, tortious or otherwise for defects in the Goods or for any loss or damage to or caused by the Goods, and subject to conditions 7.6 and 7.7 all other conditions, warranties, stipulations or other statements whatsoever concerning the Goods, whether expressed or implied, by statute, at common law or otherwise howsoever, are hereby excluded.
- 7.4 Subject to conditions 7.6 and 7.7 and notwithstanding anything contained in these Conditions (other than the conditions 7.6 and 7.7) or the Contract, in no circumstances shall the Seller be liable, in Contract, tort (including negligence or breach of statutory duty or otherwise howsoever, and whatever the cause thereof,
- (1) for any loss of profit, business, contracts, revenue, or anticipated savings; or
- (2) for any special indirect or consequential damage or any nature whatsoever.
- 7.5 Subject to conditions 7.6 and 7.7 and notwithstanding anything contained in these conditions (other than conditions 7.6 and 7.7) or the Contract, the Seller's liability to the Buyer in the Contract, tort (including negligence, or breach or statutory duty) or howsoever otherwise arising, shall be limited to the price of the Goods specified in the Contract.
- 7.6 If and to the extent that section 2(1) of the unfair contract terms act 1977 apply to the contract, no provision of the conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller:
- 7.6.1 from breach of the applicable warranties as to the title and quiet possession implied into the terms and conditions of the contract by section 12(3) of the sale of goods act 1979, or section 2(3) of the supply of the UK Goods and Services act 1982, which ever act applies to the contract.
- 7.6.2 for death or personal injury caused by reason of the negligence of the Seller or of its servants, employees or agents.
- 7.7 Where the Goods are sold under a consumer sale (as defined by the UK Sale of Goods act 1979) the statutory rights of the Buyer are not affected by these conditions.
- 7.8 The Seller shall not be under any liability for any failure to perform any of its obligations under the order due to force majeure. Following notification by the Seller to the Buyer of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations. For the purpose of this condition, force majeure means:
- act of God, explosion, flood, tempest, fire or accident;
- war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- import or export regulations or embargoes;
- strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- shortage of supply or failure to deliver of the suppliers of the Supplier;
- power failure or breakdown in machinery.
- 7.9 The Buyer accepts as reasonable that the Seller's total liability for any Goods which are defective shall be as set out in these Conditions; in fixing that limit the Buyer and the Seller have had regard to the source specification and contract price of the Goods, their nature, the use they will receive, and the resources available to each party including servicing facilities and insurance cover, to meet any liability.

## 8 Confidentiality

The Seller shall use all reasonable endeavours to keep confidential all information relating to the Buyer's business to the extent that the Seller safeguards information relating to its own business for so long as and to the extent that such information is and remains unpublished and is not known to the Seller at the time of disclosure by the Buyer or is not thereafter lawfully obtained by the Seller from a third party.

## 9 Protection of Sellers 'know how'

- 9.1 The Buyer, subject as hereinafter provided, shall be responsible for keeping and procuring to be kept secret and confidential all information (hereinafter referred to as 'the know how') supplied by the Seller of a secret or confidential nature provided that the Seller shall first have given notice in writing to the Buyer of the secret or confidential nature of such information before so supplying it.

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- 9.2 The obligations under this paragraph shall cease within 6 months of the publication by the Seller or any third party of information comprising or being part of the know how to the extent of such publication, or of agreement by the Seller that such information or part thereof is in the public domain.

### 10 Intellectual Property

- 10.1 The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programs 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 Sellers written consent for any purpose other than that for which they were furnished.
- 10.2 The Seller accepts no responsibility for the accuracy of the drawings, patterns or specifications supplied by the Buyer. The Buyer shall indemnify the Seller against all claims whatsoever for damages and costs and against all liability with respect to any infringement of patent or other intellectual property rights resulting from compliance with the Buyers instructions express 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 indemnity shall extend to any amount paid on a lawyers advice in respect of any such claim.

### 11 Risk

- 11.1 Risk of damage to or loss of the Goods shall pass to Buyer:
- 11.1.1 In the case when the Goods are delivered to the Buyer's premises by the Sellers shipping agent; or
  - 11.1.2 In the case when the Goods are collected from the Seller's premises by the Buyer's shipping agent; or
  - 11.1.3 In the case of Goods to be delivered as the Sellers premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - 11.1.4 In the case of Goods to be delivered otherwise than at the Sellers premises, at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods.

### 12 Title Retention

- 12.1 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):
- 12.1.1 The property in the Goods remains vested in the Seller (not withstanding the delivery of the same and the passing of the risk therein).
  - 12.1.2 The Buyer shall store the Goods in such a way that they can be readily identified as the Seller's property.
  - 12.1.3 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 are the Buyer's expense within 7 days of the Seller's request with a written schedule of the said locations.
  - 12.1.4 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:
    - 12.1.4.1 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 fiduciary for the Seller;
    - 12.1.4.2 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 contain herein;
    - 12.1.4.3 The Seller shall be entitled to make a claim directly against the Buyers customer for any purchase monies unpaid by such customer provided 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;
    - 12.1.4.4 The Seller may at any time revoke the Buyers said power of sale in the circumstances set out in clause 14 of these conditions;
    - 12.1.4.5 The Buyer shall notify the Seller without delay of any attachment of the Goods or actions by third parties which might infringe in our title to the Goods.
  - 12.1.5 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 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 cost and expenses incurred by the Seller in and ancillary to the process of such removal and repossession.
- 12.2 Nothing in these conditions shall:
- 12.2.1 Entitle the Buyer to return the Goods or to delay payment thereof; or
  - 12.2.2 Constitute or be deemed to have constituted the Buyer as the Sellers agent; or
  - 12.2.3 Render the Seller liable to and any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the Goods.

### 13 Indemnity

- 13.1 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 (except where clause 7.1.4.3 applies) 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:
- 13.1.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;

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- 13.1.2 The Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;
- 13.1.3 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);
- 13.1.4 The Buyer shall do nothing which would or might violate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and the 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);
- 13.1.5 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 be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 13.1.6 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 to which the Seller is liable to indemnify the Buyer under this clause.

### 14 Insolvency of Buyer

- 14.1 The clause applies if:
  - 14.1.1 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 for the purpose of amalgamation or reconstruction); or
  - 14.1.2 An encumbrancer takes possession, or a receiver is appointed, for any of the property or assets of the Buyer; or
  - 14.1.3 The Buyer ceases, or threatens to cease to carry on business; or
  - 14.1.4 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.
- 14.2 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 that 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.

### 15 General

- 15.1 The Seller reserves the right to sub-contract the fulfilment of the Contract (including any installation) or any part thereof.
- 15.2 The Buyer shall not assign any rights under this agreement without the prior consent in writing or one of the Seller's Directors.
- 15.3 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 principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 15.4 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.
- 15.5 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 questions shall not be affected thereby.
- 15.6 This agreement shall be governed by the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the Courts of England.

### 16 Entire Agreement

- 16.1 Each of the parties agrees that save in respect of statements made fraudulently it shall have no remedy in respect of any untrue statement upon which it relied in entering this Agreement and that its only remedies shall be for breach of contract.