

HALCYON COMPUTER SUPPLIES LIMITED
STANDARD TERMS AND CONDITIONS OF TRADING

1. ORDER

- 1.1. Unless otherwise agreed between the parties any contract between the Seller and the Buyer for the sale and purchase of Goods (the "Contract") will be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 1.2. For the purposes of this agreement "Goods" shall mean any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).
- 1.3. All orders are accepted subject to price ruling at date of dispatch and to the minimum order charge applicable at the time. Carriage and packaging will be charged on the whole of the order and VAT will be charged at the rate or rates prevailing.

2. DELIVERY

- 2.1. Delivery dates are based on estimates given by our suppliers and are not guaranteed. Deliveries can be delayed by non-completion or non-arrival of required documents including firm order, end-use statement, import certificate, letter of credit or any other appropriate document. No liability is accepted for any fault or delay caused by any contingency beyond our control or the control of our suppliers. In no event shall liability be accepted for consequential or special damages on account of delay due to any cause.
- 2.2. Unless otherwise agreed in writing by the Seller delivery of the Goods shall take place at the Seller's place of business.
- 2.3. If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - 2.3.1. risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller's negligence);
 - 2.3.2. the Goods will be deemed to have been delivered; and
 - 2.3.3. the Seller may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).
- 2.4. The Buyer will provide at its expense at the place where delivery is to take place under clause 2.2 adequate and appropriate equipment and manual labour for loading the Goods.
- 2.5. Shortages or damages should be reported within 48 hours of receipt of Goods.
- 2.6. Faulty Goods must be reported within 48 hours of receipt. Halcyon Computer Supplies Ltd shall arrange for replacement Goods to be dispatched at the earliest available opportunity. The replacement goods shall be invoiced and an appropriate credit raised against the faulty goods once the fault has been confirmed. Faulty goods shall not be refunded unless a replacement is unavailable.
- 2.7. The Seller may deliver the Goods by instalments and each instalment shall be treated as a separate Contract so that failure to deliver or defect in one or more instalment shall not entitle the Buyer to reject the other instalments.

3. NON-DELIVERY

- 3.1. The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

- 3.2. The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless written notice is given to the Seller within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 3.3. Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

4. PAYMENT

- 4.1. Payment becomes due 30 days from date of invoice where payment is to be made by cheque. Where the preferred payment method is BACS, payment will become due no later than the last working day of the month following the month of invoice: non-payment of due invoices will result in orders being held until such payments is received. We reserve the right to charge interest (at 3% per month) on any account not paid within our terms of trading. Such interest will be calculated from the last day of payment permissible within our terms. On any account not paid within our terms of trading we reserve the right to add to the account any costs incurred by us in instructing an agent or solicitor to act on behalf in the recovery of the account.
- 4.2. Where payment is not received on due invoices (in accordance with agreed payment terms) and it is necessary for legal action to be instigated, all monies outstanding on the account will become payable and will be included in any formal demand for such payment.
- 4.3. Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 4.4. The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

5. RISK/TITLE

Goods supplied by Seller shall be at the Buyers risk immediately on delivery to the Buyer or into custody on the Buyers behalf (whichever is the sooner) and the Buyer should therefore be insured accordingly. Property in Goods supplied will only pass to the Buyer when the Goods which are the subject of the Contract have been paid for in full. When payment has become due and has not been received in full by the Seller; the Seller shall have the right at his absolute and sole discretion to treat the contract as discharged and to repossess the Goods supplied thereunder. In the event of the Buyer becoming insolvent or of a liquidator or receiver being appointed to administer the Buyers affairs prior to payment in full to the Seller, the Seller shall have the right at his absolute and sole discretion to forthwith treat the contract as discharged and to repossess the Goods.

6. PRICE

The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all such amounts the Buyer will pay in addition when it is due to pay for the Goods.

7. QUALITY

- 7.1. The Seller warrants that (subject to the other provisions of this agreement) upon delivery, and for a period of 6 months from the date of delivery, the Goods will:
 - 7.1.1. be of satisfactory quality within the meaning of the Sale of Goods Act 1994; and

- 7.1.2. be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Seller in writing and the Seller has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Seller.
- 7.2. The Seller shall not be liable for a breach of any of the warranties in clause 7.1 unless:
- 7.2.1. the Buyer gives written notice of the defect to the Seller, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
- 7.2.2. the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's expense for the examination to take place there.
- 7.3. The Seller shall not be liable for a breach of any of the warranties in clause 7.1 if:
- 7.3.1. the Buyer makes any further use of such Goods after giving such notice; or
- 7.3.2. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 7.3.3. the Buyer alters or repairs such Goods without the written consent of the Seller.
- 7.4. Subject to clauses 7.2 and 7.3, if any of the Goods do not conform with any of the warranties in clause 7.1 the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if the Seller so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Seller.
- 7.5. If the Seller complies with clause 7.4 it shall have no further liability for a breach of any of the warranties in clause 7.1 in respect of such Goods.
- 7.6. Goods are guaranteed to the extent of the guarantee, if any, of the manufacturers. Claims under guarantee are limited to whatever amount, if any, is recoverable from the manufacturer under such guarantee.
- 7.7. No Goods may be returned without prior agreement and may be subject to a handling charge if applicable.

8. LIMITATION OF LIABILITY

- 8.1. Subject to clause 7, the following provisions of this clause 8 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 8.1.1. any breach of this agreement; and
- 8.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3. Nothing in this agreement excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation.
- 8.4. Subject to clauses 8.2 and 8.3:
- 8.4.1. the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the *Contract price*; and
- 8.4.2. the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

9. FORCE MAJEURE

The Seller reserves the right to defer the date of delivery or to cancel the order or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give not less than 3 days notice in writing to the Seller to terminate the Contract.

10. ASSIGNMENT

- 10.1. The Buyer shall not be entitled to assign the order or any part of it without the prior written consent of the Seller.
- 10.2. The Seller may assign the Contract or any part of it to any person, firm or Seller.

11. GENERAL

- 11.1. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 11.2. Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 11.3. Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 11.4. The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.5. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.