

SMART CONNECT LIMITED

GENERAL CONDITIONS OF SALE (SALES WITHIN THE UNITED KINGDOM)



These conditions alone shall govern and be incorporated in every contract for the sale of goods by or on behalf of Smart Connect Limited ("the Company") with any customer ("the Customer").

1. RULING CONDITIONS

Any contract for the sale by the Company of any goods made between the Company and the Customer (a "Contract") is subject to these Conditions (to the exclusion of any other terms and conditions including term of conditions which the Customer purports to apply under any purchase order or other document) unless they are excluded or varies by express written agreement between the Company and the Customer. In these Conditions, the term "Goods" means any goods (or part thereof) agreed in the Contract to be supplied by the Company to the Customer. Acceptance of delivery of the Goods from the Company shall be conclusive evidence before any court or arbitrator that these Conditions apply to the sale of such Goods.

2. FUTURE CONTRACTS

If, subsequent to any contract which is subject to these Conditions, a Contract is made with the same Customer without reference to any conditions of sale or purchase, such Contract howsoever made shall be deemed to be subject to these Conditions.

3. QUOTES

- Quotes issued by the Company are not offers capable of acceptance by the Customer so as to make a binding contract.
- Each order placed by the Company or acceptance by the Customer of a quotation for goods from the Company shall be deemed to be an offer by the Customer to purchase goods subject to these Conditions. Any such order or acceptance by the Customer shall not be deemed to be accepted by the Company until a written acceptance is issued by the Company or (of earlier) the Company delivers the goods to the Customer.

4. SPECIFICATIONS

The Company will take all reasonable care to ensure that its Goods comply in all material respects with any specifications quoted in any sales literature published by it but reserves the right to alter such specifications at any time without prior notice to the Customer and without any liability on the part of the Company.

5. PRICE AND PAYMENT

- The price for the Goods shall be the Company's quoted price (where such quote has been accepted by the Customer and that offer has been accepted by the Company) or, where no price has been quoted, the price set out in the Company's published price list current at the date of acceptance of the order (subject to any alteration pursuant to clause 5(b)). Unless otherwise indicated, prices are quoted exclusive of Value Added tax, which shall be added to the price at the rate applicable on the date of the invoice.
- Selling prices are subject to alteration without prior notice and the Company reserves the right to invoice at the prices ruling at the date of despatch of the Goods to take account of any increase in the cost to the Company which is due to any factor beyond the Company's control (including without limitations any foreign exchange fluctuations, currency regulations, alteration of duties, significant increases in the cost of labour materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer or any delay caused by the instructions of the Customer or failure of the Customer to give the Company adequate information or instructions notwithstanding the fact that some other price may have been quoted to the Customer.
- All prices quoted to the Customer are based on the full quantities specified by the Customer and the Company reserves the right to revise prices in the event of any quantities being reduced for whatever cause.
- Unless otherwise agreed in writing the Customer shall pay the price of the Goods to the Company by no later than the end of the month following the month in which the Goods are delivered or deemed to be delivered. Time of payment shall be of the essence of the agreement between the Company and the Customer.
- If the price of the Goods is not paid in full to the Company within that period, then (without prejudice to any of the Company's other rights and remedies in respect of such a breach):
 - the Company shall be entitled to recover the price of the Goods from the Customer by action, even though property in the Goods has not yet passed to the Customer in accordance with the provisions of paragraph 9 below;
 - all other sums owing or incurred by the Customer to the Company but not already due for payment shall thereupon become due and immediately payable in full;
 - the Company shall be entitled to cancel the Contract or suspend any further deliveries to the Customer;
 - The Company shall be entitled to charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of 3% above Barclays Bank Plc's base rate from time to time from the due date until the date payment in full is received by the Company.
- If the Customer does not specify the invoice(s) against which a payment should be appropriated, the Company shall have the right to appropriate such payment against any invoice or debt as it sees fit. Whilst the Company will normally appropriate payment against the oldest invoices first, it shall not be obliged to do so.

6. DELIVERY

- All reasonable care will be made to keep to any delivery dates specified but the Company cannot guarantee delivery dates (for which time shall not be of the essence) and they are subject to alteration without prior notice.
- The Company shall not be liable to the Customer in any way whatsoever for any delay in delivery and the Customer shall not be entitled to refuse to accept the Goods because of the late delivery.
- Unless otherwise agreed in writing delivery shall not take place when the Goods are delivered to the Customer at the address specified in the Customer's order, or if none, at the Customer's last known delivery address;
- If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or if the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisation:
 - risk in the Goods shall pass to the Customer (including without limitation for loss of damage caused by the Company's negligence);
 - the Goods shall be deemed to have been delivered; and
 - the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

7. FORCE MAJEURE

Without prejudice to the generality of paragraph 6 above, the Company reserves the right to suspend any deliveries which have not been made by virtue of any cause over which the Company has no control (including without limitation strike, lockout, riot, civil commotion, fire, accident, explosion, pest, act of God, war, stoppage of transport, short supply of goods or raw materials or any other contingency whatsoever preventing the manufacture or delivery of the goods) and in any such case deliveries may at the option of the Company be cancelled or, with the agreement of the Customer, made at the same rate of delivery commencing after the period of suspension but the Company shall in no way be liable for any loss caused by such cancellation or postponement of delivery.

8. RISK

Save as provided in Condition 6, risk in the Goods shall pass to the Customer upon delivery. From the time of delivery or deemed delivery until the time property in the Goods passes to the Customer in accordance with the provisions of paragraph 9 below, the Customer shall insure the goods for their full value in a reputable insurance office for the benefit of the Company. Upon request, the Customer will request the insurer to note the Company's interest upon the policy. The Customer shall hold the proceeds of any claim upon such insurance in respect of the Goods on trust for the Company and shall account to the Company therefor.

9. TITLE

- Notwithstanding delivery and the passing of risk, property in the Goods shall remain in the Company until the Company receives payment in full of all sums due to it in respect of:
 - the Goods;
 - all other sums which are or which become due to the Company from the Customer on any account whatsoever, at which time (and not earlier) property in the Goods shall pass to the Customer.

- Unit property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall store the Goods (at no cost to the Company) securely, safely, separately from the Customer's own goods or those of any other person and in a manner which makes them readily identifiable as the goods of the Company.

Until such time as the property in the Goods passes to the Customer (and provided that the Goods

- are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon the premises of the Customer or any third party where the goods are stored and repossess the Goods, for which purpose, the Customer grants an irrevocable licence to the Company to enter its premises.

10. LIEN

The Company shall be entitled to a general lien on all goods and property owned by the Customer in the Company's possession although the Customer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any Goods sold and delivered to the Customer under any Contract.

11. EXCLUSION OF TERMS

- Save as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permissible by law.
- Nothing in these Conditions shall operate to exclude any implied term concerning the Company's title to sell the goods or (where relevant) to exclude or limit any liability on the part of the Company for personal injury to or the death of the Customer or and person arising from the negligence of the Company or to exclude or limit any liability on the part of the Company for fraud or fraudulent misrepresentation.

12. LIMIT ON LIABILITY

- Any liability incurred by the Company in respect of Goods sold pursuant to these Conditions howsoever arising shall be limited to replacing the Goods or refunding the purchase price as the Company may in its sole discretion consider appropriate.
- Any replacement goods shall be as nearly as possible identical with the Goods being replaced and if not shall be at least of equal quality.
- The Company shall not be liable for any indirect, special or consequential loss or damage or any loss of profits howsoever caused.

13. CLAIMS FOR DAMAGE DEFECT LOSS OR NON-DELIVERY

- The Customer shall inspect the Goods immediately upon delivery.
- The Goods shall be deemed to have been delivered in accordance with the despatch note undamaged, in good order, repair and condition without any shortage and to the Customer's satisfaction unless the Company receives written notice to the contrary as follows:
 - in the case of any defect or damage to the Goods which would have been apparent on reasonable inspection by the customer, written notice must be given on the driver's delivery documents detailing in full the nature of any defect or damage and the number of Goods affected within 7 days of the date of delivery;
 - in the case of any shortage in delivery, written notice must be given on the driver's delivery documents detailing in full the extent of the shortage within 7 days of the date of delivery;
 - in the case of non-delivery of any of the Goods within 7 days of the date set out in the invoice on which the Customer was notified that the goods were due to be delivered or (if later) 5 days after receipt of the invoice by the Customer;
 - in any other case not mentioned in (i), (ii) or (iii) above within 4 months of the date of invoice.
- In the event of the Company not receiving such written notice within the aforesaid time limits the Company shall be under no liability to the Customer whatsoever.

14. EVENTS OF DEFAULT

- If:
- the Customer is overdue with any payment to the Company (whether such a default be in respect of the whole of any relevant payment or any part thereof); or
 - the Customer fails to take delivery of any Goods; or
 - the Customer shall make default in or commit any breach of its obligations hereunder; or
 - the Customer becomes insolvent or shall have any execution or distress levied upon any of its goods or property; or
 - the Customer ceases or threatens to cease to trade or if reasonable doubt arises as to the solvency of the Customer; or
 - any resolution or petition to wind up the Customer's business is (other than for reconstruction or amalgamation as a solvent company) passed or presented; or
 - a receiver or administrator is appointed over the whole or any part of the Customer's undertaking, property or assets or any part thereof; or
 - the Customer exceeds its credit limit (if any) with the Company. The Company may (without prejudice to any of its other rights hereunder) suspend further performance of its obligations to the Customer under any subsisting contract for such time (not exceeding six months) as the Company shall in its absolute discretion determine or terminate all subsisting contracts between the Company and the Customer and all sums outstanding or yet to accrue due to the Company in respect of any contracts subsisting prior to such termination shall automatically become due and payable.

15. INSTALMENTS

The Company may deliver by instalments and each instalment shall be deemed to be sold under a separate contract and no failure of or delay in delivery of any instalment or any defect in the contents thereof shall entitle the Customer to treat the contract as repudiated with regard to any remaining instalments.

16. HEALTH AND SAFETY

The Customer shall take all reasonable steps to ensure that the Goods are used in accordance with any relevant information or advice which the Company may make available to the Customer including without limitation drawing the Customer's attention to the Company's instructions and warnings relating to the safe and proper use of the Goods.

17. ASSIGNMENT

The Company alone shall be entitled to assign or transfer rights and obligations under these Conditions.

18. WAIVERS

The Company's rights and remedies shall not be prejudiced by any indulgence or forbearance to the Customer and no waiver by the Company of any breach by the Customer shall operate as a waiver of any subsequent breach.

19. SEVERABILITY

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 provision in question shall not be affected thereby.

20. SET-OFF

In addition to and without affecting its other rights and remedies, the Company shall be entitled but not obliged at any time or times without notice to the Customer to set-off any liability of the Customer to the Company under any Contract against any liability of the Company to the Customer (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purposes convert or exchange any currency.

21. NOTICES

Any notice required to be given hereunder shall be given in writing and shall be deemed to have been duly given by the Company or the Customer if sent by first class pre-paid post, telex or facsimile transmission, addressed to the other at its registered office address or such other address as one party shall have notified to the other for this purpose.

22. PROPER LAW

These Conditions and any contract for the sale of goods between the Company and the Customer shall be governed by English law and the Company and the Customer agree to submit to the non-exclusive jurisdiction of the English Courts.