

ASK4 GROUP
STANDARD TERMS
AND CONDITIONS
OF PURCHASE

ASK4

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1. INTERPRETATION

1.1 In these Conditions:

“**Buyer**” means the member company of the Ask4 Limited group whose details are shown on the relevant purchase order;

“**Seller**” means the person who accepts a purchase order from the Buyer for the purchase of the Goods;

“**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;

“**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 email, 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.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE

2.1 The Seller shall sell and 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 Seller.

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 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Buyer or the Seller shall be subject to correction without any liability on the part of the Buyer or the Seller (as the case may be).

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).

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- 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 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 statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their 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 materials used), damages, charges and expenses incurred by the Seller as a result of cancellation subject to the Seller taking all reasonable steps to mitigate any such loss, costs, damages, charges and expenses.

4. PRICE OF THE GOODS

- 4.1 The price of the Goods shall be the price shown on the Buyer's purchase order.
- 4.2 Except as otherwise stated under the terms of any quotation of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices given by the Seller shall include the Seller's charges for transport to the Buyer's premises, packaging and insurance.
- 4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller. The purchase order shall specify any applicable value added tax separately.

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 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice. The Seller shall be entitled to deliver the invoice and recover the price, once delivery has taken place or is deemed to have taken place. The time of payment of the price shall not be of the essence of the Contract. Receipts for payment will be issued only 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 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
- 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of four per cent per annum above National Westminster Bank 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).

6. DELIVERY

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the delivery address specified in the Buyer's purchase order.
- 6.2 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 however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing or so specified on the Buyer's order form. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving 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 (or any instalment) 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.
- 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 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:
 - 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 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.

7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
 - 7.1.1 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; or
 - 7.1.2 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.
- 7.2 The property in the Goods shall pass to the Buyer at the same time as delivery of the Goods.

8. WARRANTIES AND LIABILITY

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
 - 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's or manufacturer's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

- 8.2.3 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 within 28 days of the due date for payment;
- 8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 28 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect 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 and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4 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 in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund 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.
- 8.5 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), costs, expenses or other claims for compensation whatsoever (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.
- 8.6 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 or 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:
- 8.6.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.6.4 import or export regulations or embargoes;
- 8.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.6.7 power failure or breakdown in machinery.

9. INDEMNITY

- 9.1 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:
- 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

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- 9.1.3 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);
 - 9.1.4 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);
 - 9.1.5 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; and
 - 9.1.6 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.

10. INSOLVENCY OF BUYER

- 10.1 This clause applies if:
 - 10.1.1 the Buyer makes any voluntary arrangement with its creditors (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 10.1.4 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.
- 10.2 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.

11. EXPORT TERMS

- 11.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a 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 latter shall prevail.
- 11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 11.3 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 on them.
- 11.4 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 Sale of Goods Act 1979.
- 11.5 The Buyer shall be responsible for arranging for testing and 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.

- 11.6 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the European Union acceptable to the Seller or, if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of National Westminster Bank in England as may be specified in the bill of exchange

12. GENERAL

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing (but not by way of email) addressed to that other party at its registered office or principal 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.
- 12.2 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 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.
- 12.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.

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