



## **AGD SYSTEMS LIMITED**

### **TERMS & CONDITIONS OF SALE**

#### **1 DEFINITIONS**

In these terms:

##### **"THE BUYER"**

means the person, firm, company or organisation which places an order with the Seller and to which the Seller supplies Products, Services or Software;

##### **"THE 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;

##### **"THE CONTRACT"**

means the contract for the purchase and sale of the Products of which these Conditions form part;

##### **"THE PRODUCTS"**

means the products which the Seller is to supply to the Buyer in accordance with these Conditions;

##### **"THE SELLER"**

means AGD Systems Limited (registered in England under number 2666988);

##### **"SERVICES"**

means the services which the Seller is to provide to the Buyer in accordance with these Conditions;

##### **"SOFTWARE"**

means all software supplied by the Seller to the Buyer under the Contract;

##### **"WRITING"**

includes facsimile transmission, transmission by electronic mail and any comparable means of communication.

#### **2 APPLICATION OF THESE TERMS**

- 2.1 The Seller sells the Products and provides the Services and the Software on the following terms or terms set out in a written contract with the Buyer signed by a director of the Seller.
- 2.2 These terms take precedence over any terms which may be provided by the Buyer. In accepting delivery of any Products, the Buyer shall be deemed to have agreed that these terms apply to the Contract.
- 2.3 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Products unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Products which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 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 Seller shall be subject to correction without any liability on the part of the Seller.



### 3 **PRICE**

- 3.1 The price of the Products shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order.
- 3.2 The price for Products is exclusive of applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.
- 3.3 The price of the Products includes the licence fee for the Buyer's right to use the Software.
- 3.4 The price does not include the cost of packing or delivery of the Products.
- 3.5 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture.

### 4 **PAYMENT**

- 4.1 The price for the Products is due for payment in full within thirty (30) days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Products has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 4.2 Any query concerning the Seller's invoice must be made by the Buyer within seven (7) days of the Buyer's receipt of the invoice and failing any such query being raised within such period the Buyer will be deemed to have accepted that the details shown on the Seller's invoice are correct.
- 4.3 If the Buyer fails to pay for the Products in full on or before the due date for payment the Seller may without notice suspend any credit facilities the Buyer may have with the Seller and may upon giving notice to the Buyer cancel or suspend compliance with the Seller's obligations under any other contract then subsisting between the Buyer and the Seller, without prejudice to any other right or remedy available to the Seller.
- 4.4 The Seller shall be entitled to charge the Buyer interest on any part of the price for the Products which remains unpaid by the Buyer after the due date for payment. Interest shall be charged at the rate of 4% per annum above The Bank of England base rate from time to time until payment in full is made (both before and after any judgment) and shall be compounded with quarterly rests.
- 4.5 If any Products are ordered by the Buyer on terms that they should be delivered to the Buyer when requested by the Buyer, the Seller shall be entitled to invoice the Buyer one year after the date of the Contract for any Products not requested by the Buyer for delivery prior to that date.

### 4.6 **CANCELLATION AND RETURNS**

4.6.1 Any Goods returned as 'unwanted' or 'incorrectly ordered' may be accepted at the discretion of the supplier but will be subject to a minimum restocking fee of 25% of the invoice value of the Goods.

4.6.2 Products must be returned to the supplier in their original condition and packaging and in a condition which will enable them to be immediately fit for re-sale.

4.6.3 Where the Customer returns products to the supplier not in accordance with 4.6.1 and 4.6.2 above (for example, in an unfit state) the supplier will refuse delivery and return the products at the Customer's expense or may apply a handling charge which relates to the actual cost of reprocessing (subject to the minimum charge set out in 4.6.1 above).

### 5 **CONFIDENTIALITY**

The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Seller or its agents and any other confidential information concerning the Seller's business or its products which the Buyer may obtain and the Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Seller and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Buyer.

### 6 **DELIVERY**

- 6.1 The Seller will arrange delivery of the Products at the cost of the Buyer to such address within the United Kingdom as the Buyer shall have specified.
- 6.2 The Seller will use its reasonable endeavours to achieve any delivery date which may have been quoted either by the Seller or by the Buyer but time for delivery shall not be of the essence.

### 7 **RISK AND PROPERTY**

- 7.1 Risk in the Products or any part of the Products shall pass to the Buyer upon leaving the Seller's premises. Accordingly the Buyer shall be responsible for any loss or damage to the Products occurring while the Products are in transit.



- 7.2 Property in the Products shall not pass from the Seller to the Buyer until the Buyer has paid all sums due from the Buyer to the Seller at the time when the price for the Products falls due for payment.
- 7.3 Until such time as the property in the Products passes to the Buyer, the Buyer shall hold the Products as the Seller's fiduciary agent and bailee, and shall keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Products in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the property in the Products passes to the Buyer, the Seller and its representatives shall be entitled at any time to enter the Buyer's premises and repossess the Products, for that purpose making any such disconnections between the Products and any other goods or equipment on the Buyer's premises as may be necessary and without being liable for any consequent damage or disruption.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge, by way of security, for any indebtedness any of the Products which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8 **SPECIFICATION**

- 8.1 The product(s) has been manufactured and tested for use/operation within the boundary of the country to which they are being supplied to by AGD Systems Ltd. Onward selling to another user/country of use may infringe the regulatory requirements of the end market. It is the purchasers responsibility to ensure onward selling does not infringe any regulatory requirements. For products containing BlueTooth® devices please ensure that these are acceptable within the country of use. If you need assistance with regard to the regulatory requirements in countries other than your own then please contact AGD for further information.
- 8.2 The Buyer shall indemnify the Seller against any and all liabilities claims and costs incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the Products in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights or any third party.
- 8.3 The Seller shall have no liability to the Buyer in the event of Products infringing or being alleged to infringe the rights of any third party. In the event that the Products are or may be the subject of third party rights the Seller shall be obliged to transfer to the Buyer only such title as the Seller may have.
- 8.4 The Buyer shall notify the Seller forthwith of any claim made or action brought or threatened alleging infringement of the rights of any third party. The Seller shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Buyer shall provide all such reasonable assistance in connection therewith as the Seller may request. The cost of any such proceedings shall be borne in such proportions as the parties shall determine.

## 9 **WARRANTY**

- 9.1 The Seller warrants that:
- 9.1.1 any part of the Products which is hardware
- (a) will be free from defects of materials or workmanship; and
- (b) will function substantially in accordance with the specification for that part published by the Seller at the time the Contract is entered into
- for a period as defined for each product range from the date of despatch from the Company's premises.
- the Software will function substantially in accordance with any specification published by the Seller for a period of one year from the date of the Contract.
- 9.2 The Seller does not guarantee that all parts of the Products are manufactured using systems for which ISO 9000 accreditation has been granted.
- 9.3 The above warranty is given by the Seller subject to the following conditions:
- 9.3.1 the Seller shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;
- 9.3.2 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 instructions (whether oral or in writing), misuse, improper installation, alteration or repair of the Products without the Seller's approval;
- 9.3.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment; and



9.3.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

9.4 No warranty is given by the Seller that the Products or any part of them will be suitable for any particular purpose for which the Buyer may require them.

9.5 Subject as expressly provided in these Conditions, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.6 Any claim by the Buyer which is based on any short shipment or defect in the quality or condition of the Products or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within forty-eight (48) hours 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 Products 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 Products had been delivered in accordance with the Contract.

9.7 Where any valid claim in respect of any of the Products which is based on any defect in the quality or condition of the Products or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Products (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Products (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer. If the Seller finds that any repair requires the Seller to buy in items of equipment, the Seller shall charge the Buyer at cost for such items.

9.8 If the Buyer returns any Products to the Seller for repair or replacement pursuant to the warranty in Clause 9.1 above, the Buyer will be responsible for costs of delivery to the Seller.

9.9 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, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and 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 Products or their use or resale by the Buyer, except as expressly provided in these Conditions.

9.10 The Seller's liability to the Buyer in respect of the Contract or in connection with the supply of the Products shall not exceed the price for the Products paid by the Buyer.

9.11 **REPAIRS**

Customers with suspected faulty equipment should return it to AGD with the following information for the attention of the Service Centre:

- Your company details including address for return, phone numbers, both for the general office and specific contact names.
- A detailed description of the suspected fault.
- The unit description, product type and serial number.
- Your reference number.

a) **Warranty Repairs**

Following evaluation of the equipment by the Service Centre the unit will be repaired, normally within 5 working days, and returned to you at the Company's cost with supporting documentation.

b) **Non-Warranty Repairs**

Should a fault occur outside of the advertised warranty period, the Service Centre will provide a written quotation for the repair. Repairs are undertaken on acceptance of the quotation with a covering purchase order.

c) **Period of Repair Warranty**

All repairs are warranted for 1 year or to the end of any outstanding warranty period still in force from original date of purchase (whichever is longer) and is valid for the replaced/repaired component(s) only.

10 **SOFTWARE LICENCE**

10.1 The Seller grants to the Buyer a non-exclusive, perpetual licence to use the Software.

10.2 The Buyer acknowledges that any and all of the trade marks, trade names, copyrights, patents and other intellectual property rights used or embodied in or in connection with the Software or any other part of the Products in which the Seller has an interest is and shall remain the sole property of the seller or the Seller's supplier. The Buyer shall not in any way question or dispute the ownership of any such rights.

10.3 The Buyer will not copy or modify the whole or any part of the Software or reverse engineer, decompile or disassemble the Software except as permitted by law.



10.4 The Buyer will not assign, transfer, sale, lease, sub-licence or otherwise deal in the Software or any part of it.

11 **INTELLECTUAL PROPERTY RIGHTS**

11.1 The Seller warrants to the Buyer that the normal use and possession of the Software will not infringe the patent, copyright, registered design or trade mark rights of any third party.

11.2 In the event of any claim by any third party against the Buyer for breach of any such right by normal use of possession of the Software by the Buyer, the Buyer shall promptly and fully notify the Seller, will not make any admission of liability to such third party and will permit the Seller, at the Seller's cost, to have the sole conduct of the defence of any such claim. The Buyer will act in accordance with the reasonable instructions of the Seller in connection with the defence of any such claim.

12 **TERMINATION**

12.1 The Seller shall be entitled by written notice to the Buyer to terminate the Contract forthwith (without prejudice to any right or remedy available to the Seller and without any liability to the Buyer) in the event that:

12.1.1 the Buyer commits any breach of any of the provisions of the Contract and, in the case of such a breach which is capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring such breach to be remedied; or

12.1.2 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 than for the purposes of amalgamation or reconstruction); or

12.1.3 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or

12.1.4 the Buyer ceases, or threatens to cease, to carry on business; or

12.1.5 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.

13 **FORCE MAJEURE**

13.1 Neither party shall be liable or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Products, if the delay or failure was due to any cause beyond its reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:

13.1.1 act of God, explosion, flood, tempest, fire or accident;

13.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

13.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

13.1.4 import or export regulations or embargoes;

13.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

13.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery; or

13.1.7 power failure or breakdown in machinery.

14 **CANCELLATION**

The Buyer may not cancel the Contract without the prior written consent of the Seller which shall only be given at the Seller's entire discretion and subject to such conditions as the Seller may consider appropriate including that the Buyer shall bear the cost of all expenses incurred by the Seller in respect of the Contract prior to the date of cancellation and all loss and damage incurred by the Seller as a result of the cancellation.

15 **SERVICES**

15.1 If the Contract provides for the supply of Services only (and not any Products) by the Seller to the Buyer:

15.1.1 all Conditions shall apply, save for clauses 3.3, 3.4, 4.5, 7.1-7.5, 8.1-8.4, 9.1-9.4, 9.6-9.8, 9.10, 10.1-10.4, 11.1 and 11.2; and

15.1.2 the following additional clauses shall apply to the Contract:



- (a) the Seller warrants that the Services will be supplied with reasonable skill and care;
- (b) the Seller's liability for breach of the warranty set out in 15.1.2(a) shall be limited to the correction or remedy of the Services supplied; and
- (c) under no circumstances shall the liability of the Seller for breach of the warranty set out in 15.1.2(a) exceed the price paid by the Buyer to the Seller under the terms of the Contract.

16 **GENERAL**

- 16.1 Failure or neglect by the Seller to enforce at any time any of the provisions of the Contract shall not be construed nor shall be deemed to be a waiver of the Seller's rights nor in any way affect the validity of the whole or any part of the Contract nor prejudice the Seller's rights to take subsequent action.
- 16.2 If any Condition is held by any competent authority to be 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.
- 16.3 The Contract shall not be assigned by the Buyer without the prior written consent of the Seller.
- 16.4 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 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.
- 16.5 The Contract shall be governed by and construed in accordance with English law and both the Buyer and the Seller submit to the exclusive jurisdiction of the English Courts as regards any claim, dispute or matter arising out of or relating to the Contract.