

TERMS & CONDITIONS

1. Introduction

1.1 In these Terms a reference to:

- "Contract" means the contract between MWA and You for the supply of Goods in accordance with these Terms;
- "Goods" means the goods supplied by MWA to You, as set out in the Order;
- "MWA" means MWA Technology Limited;
- "Order" means the method by which You communicate Your order for the Goods You require from MWA from time to time;
- "You" or "Your" means the person or firm who purchases Goods from MWA.

1.2 These Terms apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.3 No variation, and no additional terms and conditions to this Order, will be valid unless accepted in writing and signed by MWA.

2. The Contract

2.1 The Order constitutes an offer by You to purchase Goods from MWA in accordance with these Terms. You are responsible for ensuring that the Order and any specification are complete and accurate.

2.2 The Order shall only be deemed to be accepted when MWA issues a written acceptance of the Order or proceeds to arrange supply of the Goods ("Order Acceptance"), whichever is earlier, at which point the Contract shall come into existence, as set out in any Order Acceptance form sent by MWA in relation to Your Order and these Terms ("Contract Documents").

2.3 Should it become necessary to amend any detail of the Order following the issue of the Order Acceptance, the variation will only become part of the Contract when agreed in writing by MWA.

3. Warranty and Guarantee

3.1 MWA warrants that the Goods will be free from any defects in material or workmanship for a period of one year after the date of delivery to You.

3.2 Where MWA is not the manufacturer of the Goods, MWA will use reasonable endeavours to transfer to You the benefit of any warranty or guarantee given by the manufacturer.

4. Performance, Specification and Design

4.1 MWA will provide the Goods to You in accordance in all material respects with any specification You have supplied and that has been referenced in the Order Acceptance.

4.2 Where You have supplied a specification to MWA, You shall indemnify MWA against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by MWA in connection with any claim made against MWA for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with MWA's use of the specification. This Clause 4.2 shall survive termination of the Contract.

4.3 Where the Goods are manufactured in accordance with information or drawings supplied by You or to Your design or specification or where standard Goods are altered in accordance with Your instructions, no guarantee or warranty is given by MWA as to the practicability, efficiency, safety or otherwise of the Goods (this being without prejudice to any of the other Terms).

4.4 Where no specification has been supplied by You:

4.4.1 MWA will provide the Goods based on the information You have supplied and use all reasonable endeavours to ensure the Goods meet the purpose for which they are required.

4.4.2 MWA will not be liable if the Goods do not meet the particular level of performance that they are required for.

4.5 Where MWA provides advice on specification, You remain responsible for ensuring that the specification is adequate for the purposes You require.

4.6 No variation in the specification or design of any Goods, which in the reasonable opinion of MWA does not affect the suitability of the Goods for the purpose for which they are supplied, will constitute a breach of Contract or impose upon MWA any liability whatsoever.

4.7 Unless otherwise agreed, all patterns, drawings, tools or other similar items produced or other property (whether intellectual property or not) owned or created by MWA will remain the property of MWA and must not be used or copied by You.

5. Delivery

5.1 MWA may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle You to cancel any other instalment.

5.2 MWA will use all reasonable endeavours to meet any delivery dates specified by You, but any such dates are estimates only and time shall not be of the essence for the delivery of the Goods unless specifically agreed in writing by MWA.

5.3 If You fail to accept delivery of the Goods within three working days of MWA notifying You that the Goods are ready, then, except where such failure or delay is caused by an event outside of Your or MWA's reasonable control or MWA's failure to comply with its obligations under the Contract: (a) delivery of the Goods shall be deemed to have been completed at 9am on the third working day after the day on which MWA notified You that the Goods were ready; and (b) MWA shall store the Goods until delivery takes place, and charge You for all related costs and expenses (including insurance).

5.4 If, 10 working days after the day on which MWA notified You that the Goods were ready for delivery, You have not accepted delivery of them, MWA may resell or otherwise dispose of part or all of the Goods.

5.5 MWA will not be liable for any failure or delay in performance of any obligations under the Contract due to anything beyond its reasonable control, such as adverse weather, industrial dispute or failure of a utility service. Where such events occur, MWA will use reasonable endeavours to provide the Goods. However, where the circumstances prevent the delivery of all or part of the Goods for more than 90 days, MWA reserves the right to terminate the Contract.

6. Your Obligations

You will:

6.1 Ensure the details of the Order and any information provided regarding a specification are complete and accurate.

6.2 Ensure that any specification requested by You or proposed by MWA is sufficient to ensure that the end product of the Goods is fit for the purpose required by You.

6.3 Provide MWA with such information as it may reasonably require in order to supply the Goods.

6.4 Notify MWA within 14 days of delivery where a defect is discovered in the Goods upon delivery.

7. Payment

- 7.1** You will pay MWA the price for the Goods stated in the Order Acceptance plus VAT within 30 days from the date of the invoice. Where the Order Acceptance sets out payment terms inconsistent with this Clause 7.1, the Order Acceptance terms will apply.
- 7.2** Where payment is not received by the due date for payment, MWA has the right to charge interest at a rate of 4 percent per annum above National Westminster Bank Plc's base lending rate from time to time.
- 7.3** MWA may, by giving notice to You at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to: (a) any factor beyond MWA's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (b) any request by You to change the delivery date(s), quantities or types of Goods ordered; or (c) any delay caused by any instructions by You or failure by You to give MWA adequate or accurate information or instructions.
- 7.4** Time for payment is of the essence of the Contract.
- 7.5** You shall not be entitled to claim set off or to counterclaim against MWA in relation to the whole or part of the invoiced amount.

8. Title and Risk

- 8.1** The risk in the Goods shall pass to You on completion of delivery.
- 8.2** Title to the Goods shall not pass to You until MWA has received payment in full (in cash or cleared funds) for the Goods.
- 8.3** Until title to the Goods has passed to You, You shall: (a) hold the Goods on a fiduciary basis as MWA's bailee; (b) store the Goods separately from all other Goods and any other stock held by You so that they remain readily identifiable as MWA's property; (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and (e) notify MWA immediately if You become subject to any of the events listed in Clause 8.5; but You may resell or use the Goods in the ordinary course of Your business.
- 8.4** If, before title to the Goods passes to You, You become subject to any of the events listed in Clause 8.5, or MWA reasonably believes that any such event is about to happen and notifies You accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy MWA may have, MWA may at any time require You to deliver up the Goods and, if You fail to do so promptly, enter Your premises or those of any third party where the Goods are stored in order to recover them.
- 8.5** For the purposes of Clause 8, a relevant event means You becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, entering into a voluntary arrangement or having a receiver, an administrative receiver or an administrator appointed in respect of the whole or any part of Your assets.

9. Liability

YOUR PARTICULAR ATTENTION IS DRAWN TO THIS CLAUSE

- 9.1** Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.2** Nothing in these Terms excludes or limits MWA's liability for death or personal injury caused by negligence, or for fraud or fraudulent misrepresentation.
- 9.3** MWA will not be liable to You, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.
- 9.4** MWA shall have no liability for defective Goods unless the relevant Goods are returned to MWA for inspection within 28 days of the discovery of any defect. MWA shall use all reasonable endeavours to rectify defects in the Goods, provided that the defective Goods are made available to MWA in the same condition as they were supplied i.e. are not damaged or altered.
- 9.5** This Clause 9 shall survive termination of the Contract.

10. Termination

- 10.1** Without limiting its other rights or remedies, each party has the right to terminate the Contract by giving 3 months' written notice.
- 10.2** Either party may terminate this Contract with immediate effect by giving written notice to the other party if that other party have committed a material breach of the Contract which has not been remedied satisfactorily within 7 days of written notice.

11. General

- 11.1** This Contract does not confer rights on any person under the Contracts (Rights of Third Parties) Act 1999.
- 11.2** If MWA's performance of its obligations under the Contract is delayed or prevented as a result of an act or omission by You, MWA will not be liable for any costs or losses sustained by You and You will reimburse MWA for any costs or losses it sustains as a result of the delay.
- 11.3** The Contract constitutes the entire agreement between You and MWA. You acknowledge You have not relied on any statement, promise or representation given on behalf of MWA which is not set out in the Contract Documents.
- 11.4** Where Goods are to be exported outside of the United Kingdom, payment will be in pounds sterling. You will be responsible for arranging any necessary export paperwork (including any export licence). Uniform Laws on International Sales shall not apply to the Contract.
- 11.5** Any waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom it is addressed and to the circumstances for which it is given. No failure or delay in exercising any right or remedy under the Contract or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.
- 11.6** This Contract shall be governed by English law and the parties shall submit to the exclusive jurisdiction of the English courts.
- 11.7** Illegality or unenforceability of any part of the Contract shall not affect the enforceability or legality of the remainder of the Contract.

12. Notices

- 12.1** All notices or other communications in connection with the Contract must be in writing and shall be validly served if:
- delivered to the other party personally; or
 - sent by prepaid first-class post or recorded delivery to its registered office (if a company) or principal address.

13. Returns

- 13.1** Goods are to be returned at buyer's expense, if the goods are found to be defective MWA Technology Ltd will refund the costs. Non defective Goods will be subject to a restocking charge