

Industrial Computers Limited General Terms and Conditions



1 DEFINITIONS

In these conditions the following expressions shall have the following meanings;

- (i) «The Company» shall mean Industrial Computers Ltd.
- (ii) «The Buyer» shall mean the person, firm or company placing the order.
- (iii) «The Goods» shall mean any goods or materials or services described on the order.

2 GENERAL

If the following conditions shall conflict or be inconsistent with the terms or conditions contained incorporated or referred to in any document of the Buyer, then these conditions shall prevail unless otherwise agreed in writing by the Company.

3 QUOTATIONS & PRICES

The prices, quantities and delivery times stated in any quotation shall not be binding on the Company unless and until the Company has confirmed in writing its acceptance of an order placed by the Buyer in accordance with the quotation. The Buyer's order must be in writing and contain sufficient information to enable the Company to proceed. Verbal orders will only be accepted if confirmed in writing.

The Company reserves the right to increase without notice, quoted prices after the date of the Company's acceptance of an order to cover:

- (a) Increases by suppliers to the Company.
- (b) Extra cost incurred as a result of the cancellation, alteration or rescheduling of orders due to the Buyer's instructions or lack of instructions.
- (c) Currency fluctuations, which increase the cost to the Company of materials or goods imported into the United Kingdom.

All prices quoted exclude VAT and all other taxes. Carriage is charged extra.

4 DATA REGARDING GOODS

Any data delivered to the Buyer concerning the goods is not to be considered binding and constitutes only an approximate guide. Specifications, drawings and other documents relating to the goods remain the property of the Company and may not be transmitted to a third party without the Company's written consent. All such documents must be returned to the Company if no order is placed with it or if any order is not accepted.

5 PACKAGING

The specification for packing the products shall be entirely at the discretion of the Company who shall have the right to pack all products in such a manner and with such materials and in such quantities as it in its absolute discretion thinks fit and shall not be obliged to comply with any packaging instructions or requests of the Buyer.

6 DELIVERY & RISK

(a) The Buyer shall be bound to accept delivery of the goods by instalment and shall not be entitled to reject delivery or part delivery of the goods ordered. Defects in quality or dimensions of all or part of the goods in any instalment shall not be a ground for cancellation of the remainder of the order.

(b) The Company shall be under no liability for direct or consequential loss in respect of delay or the consequences of any delay in full or part delivery or for any failure to deliver caused by failure of the Company's suppliers to meet their delivery dates, acts of war, sabotage, insurrection, civil or other disorders, acts of an enemy state, acts of Government or local authority, judicial action, labour disputes and shortages, accident, fire, flood, explosions, storm or other acts of God, lack of fuels, raw materials or machinery or technical breakdown or by any other occurrence beyond the Company's reasonable control. This clause applies to any of these causes occurring either in the United Kingdom or in the country of origin of the goods.

(c) No order accepted by the Company can be cancelled or suspended by the Buyer except with the consent of the Company in writing. The Company shall have no liability for any consequential loss caused by any cancellation or suspension of an order.

(d) Should delay in delivery be caused by the Buyer, the Company may store the goods at the sole risk and expense of the Buyer and payment of the parts may be at the Company's discretion be due on the date on which the consignment was ready for delivery.

(e) Unless acceptable specific instructions are received from the Buyer, the Company shall select a suitable carrier for the goods. Delivery of the goods in good condition to such a carrier constitutes delivery to the Buyer and the risk in the goods shall pass to the Buyer at this point. Any miss-delivery, breakage or other damage shall thereupon be the responsibility of the Buyer who may also be responsible for obtaining and paying for insurance and carrying out negotiations in the event of loss, miss-delivery, breakage or other damage regardless of the fact that insurance may have been secured by the Company.

7 PROPERTY OF THE GOODS

(a) The Company will retain title of the delivered goods until these have been fully paid for in accordance with the terms of this contract.

(b) If payment is overdue in whole or in part, the Company may (without prejudice to any of its other rights) recover the goods or any of them and resell them and may enter upon the Buyer's premises by its servants or agents for that purpose.

(c) Payment shall be due immediately upon the commencement of any act or proceedings in which the Buyer's solvency is involved.

(d) Until payment in full for all the goods delivered to the Buyer being received by the Company, the Buyer shall hold the goods as bail for the Company and if the Company so desires the Buyer is required to store the goods in such a way that they are clearly the property of the Company and further the Buyer shall not without the express consent of the Company in writing be entitled to sell the goods on and/or incorporate them in any other article and/or make use of them in any other way including pledging or assigning the goods to a third party.

(e) In the event that the Buyer does sell the goods, whether incorporated in another article or not, to a Sub-purchaser in accordance with the preceding clause until payment in full has been made to the Company, that part of the proceeds of sale which represents the total payment due to the Company from the Buyer for the goods shall be kept separately by the Buyer and belong to the Company and the Company shall have the right to trace the proceeds in accordance with the principles of re: Hallett's Estate 1880 13CH.D 696.

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8 PAYMENTS

- (a) All orders are subject to credit approval before acceptance. Payments shall be made within 30 days of the date of invoice without any deductions and the time within which the Buyer is to pay for the goods shall be of the essence of the contract. The Company reserves the right to make delivery subject to immediate cash payment or to send the goods C.O.D.
- (b) Bill of Exchange, Bankers Drafts and Letters of Credit shall be accepted only by prior agreements in writing and the Buyer will be liable for any discounting or bank charges incurred.
- (c) If the Buyer is in default in making payment, the Company may decline to make further deliveries without in any way affecting its rights under, or repudiating the contract. If despite any default by the Buyer, the Company continues to supply goods, this shall not constitute a waiver or in any way prejudice the Company's legal remedies for any defaults.
- (d) If the Buyer is in default in making payment, the Company shall without special notice and without prejudice to its right to claim further damages, be entitled to charge compound interest at the rate of 2% per calendar month for the period the payment is overdue.
- (e) Should the financial position of the Buyer deteriorate significantly before payment is due, the Company shall be entitled to demand immediate payment or security from the Buyer. Provided that the financial position of the Buyer shall be deemed to have deteriorated significantly if, but only if, any distress or execution shall be levied upon the Buyer his property or assets or if the Buyer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against him or if any distraintment order be made against him or if the Buyer shall be a limited company any resolution or petition to wind up such company's business shall be presented otherwise than for a reconstruction or amalgamation or if a receiver of such company's undertakings or assets or any substantial part thereof shall be appointed or if any deed of assignment for a significant portion of such company's assets is entered into.
- (f) The Buyer shall notify the Company immediately on the occurrence of any of the events specified in the proviso to sub-clause (e) above.

9 WARRANTIES

- (a) Patent Defects and Incorrect Deliveries: The Buyer shall inspect the goods immediately on arrival thereof and shall within 14 days of their arrival give notice to the Company of any defect in the goods or any other matter by reason whereof he alleges that the goods are not in accordance with the contract. If the Buyer fails to give such notice the goods shall be deemed to be free of patent defects and in all respects in accordance with the contract and the Buyer shall be bound to accept and pay for them accordingly. If the Buyer gives such notice and the delivered goods are proved to be defective, the Company shall at its own discretion replace or repair the goods free of charge or refund the purchase price and the Buyer shall have no further rights to damages or otherwise against the Company.
- (b) The Guarantee will not extend to faults caused by incorrect or inappropriate use or handling of the goods, nor to any goods which have been repaired or in any way altered without the consent of the Company in writing, nor to any consequential loss including loss of data, damage or expense howsoever arising.
- (c) Goods returned to the Company under guarantee shall be returned at the Buyer's expense and re-delivered to the Buyer at the Buyer's expense.
- (d) No other condition or warranty is made, given or to be implied as to the quality, life or wear of the goods supplied or that they will be suitable for any particular use or for use under any particular conditions, notwithstanding that such purpose or condition may be known or made known to the Company.

10 PARTIAL INVALIDITY

If and to the extent that any clause or clauses of these terms and conditions of sale shall prove invalid the remaining provisions and the contract shall remain valid and binding. Any invalid clauses shall be renegotiated with the intention of replacing such clauses by new provisions with similar economic implications. Such substituted provisions shall be binding on both parties.

11 WAIVER

The failure of the Company to insist upon strict performance in any of the terms and conditions stated herein shall not be considered a continuing waiver of any such term or condition or of any other terms and conditions.

12 PROPER LAW

The contract shall in all respects be construed and operate in accordance with English Law and the Company and the Buyer hereby submit to the non-exclusive jurisdiction of the English Courts.

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