

# TERMS AND CONDITIONS OF SALE

## 1 DEFINITIONS

- 1.1 In these Terms:  
"the Customer" means any party with whom the Company contracts;  
"the Company" means Cifer Data Systems Ltd  
"the Goods" means the goods supplied by the Company to the Customer under the contract on the basis of these Terms ("the Contract").

## 2 BASIS OF THE SALE

- 2.1 No order submitted by the Customer shall be binding on the Company unless and until it is accepted over the telephone by an authorised representative of the Company and/or confirmed in writing by the Company.
- 2.2 Any representation or warranty in relation to the Goods made prior to the Contract is expressly excluded.
- 2.3 If a sample of the Company's goods shall be produced to and/or inspected by the Customer, this shall not constitute a sale by sample and the Goods will not necessarily conform to the sample.
- 2.4 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.
- 2.5 Any quotation given by the Company is an invitation to the Customer to place an order only within 30 days of the quotation date or such time as is agreed.
- 2.6 These Terms shall govern the Contract to the exclusion of any other terms and conditions subject to which an order is made or purported to be made by the Customer.
- 2.7 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order including any applicable specifications.
- 2.8 No order which has been accepted by the Company may be cancelled by the Customer except with the Company's agreement and on the basis that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs and expenses incurred by the Company as a result of such cancellation.

## 3 PRICE

- 3.1 The price of the Goods ("the Price") shall be the price listed in the Company's published price list current at the date of delivery unless otherwise agreed in the Contract.
- 3.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the Price to reflect any increase in the costs to the Company which is due to any factor beyond the control of the Company.
- 3.3 Unless otherwise stated the Price is ex-works and exclusive of delivery and packing charges.
- 3.4 The Price is exclusive of Value Added Tax.
- 3.5 Unless otherwise agreed, the cost of pallets and packaging will be charged to the Customer in addition to the Price. Credit will be given to the Customer (where agreed with the Company) provided such pallets and packaging are returned undamaged to the Company or its supplier within the time notified to the Customer.

## 4 PAYMENT

- 4.1 The Price shall be payable net cash and without set-off no later than 30 days from the month-end following the date of invoice. The time of payment of the Price shall be of the essence of the Contract.
- 4.2 If the customer fails to make any payment by or on the due date the Company shall be entitled to charge interest at the rate of 8% above the Bank of England base rate plus compensation as per the Late Payment of Commercial Debts Act 1998 from the due date until the date of payment, both before and after judgement. The customer agrees to indemnify the Company for all costs and expenses which it may incur (including any legal costs) in recovering any unpaid sum.
- 4.3 The Company reserves the right at any time in its absolute discretion to demand and receive immediate payment in respect of any order whether due or not.

## 5 DELIVERY

- 5.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises or, if a place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 5.2 In the event of any Goods being delivered at the Customer's request by instalments, each instalment shall be the subject of a separate Contract, on the basis of these Terms.
- 5.3 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods. Time for delivery of the Goods shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 5.4 If the Company is unable to deliver the Goods due to circumstances beyond its control or if the Customer fails to take delivery of the Goods on the date named by the Company for delivery for whatever reason then, without prejudice to any other right or remedy available to the Company, the Company may (on giving the Customer notification of readiness to deliver) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage.
- 5.5 The Customer shall ensure that the Company's delivery vehicle shall have proper access to any agreed delivery site. The Company will not deliver Goods over roads or grounds that in the Company's (or its authorised representative's) opinion is considered to be unsuitable. The Customer shall indemnify the Company in respect of all costs, claims, losses or expenses which the Company may incur as a result of delivery to the Customer's delivery site or any other place subsequently nominated by the Customer for delivery.
- 5.6 "Delivery to Site" shall mean the delivery of a full load to any agreed delivery site subject to access to the delivery site being suitable for the Company's delivery vehicle (as mentioned in clause 5.5) with the load thereon as to which the opinion of the Company's driver shall be final. The Customer shall be responsible at its own expense for providing whatever assistance is required for the unloading of the Goods from the delivery vehicle at any agreed delivery site.
- 5.7 No claim by the Customer for damage in transit or shortage of delivery of Goods during delivery will be entertained by the Company unless the Company is notified in writing with full details of the damage or shortage within 2 days of receipt of the Goods.

## 6 RISK AND RETENTION OF TITLE

- 6.1 Risk of damage to or loss of the Goods shall pass to the Customer:
- 6.1.1 In the case of goods to be collected by the Customer from the Company's premises at the time when the Customer collects the Goods; or
- 6.1.2 In the case of Goods to be delivered by the Company at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.
- 6.2 Until full payment has been received by the Company for all goods whatsoever supplied at any time by the Company to the Customer:
- 6.2.1 Property in the goods shall remain in the Company and the Customer shall hold them as the Company's bailee and fiduciary agent;

- 6.2.2 The Customer shall keep the goods properly housed and protected and shall store them separately and in such a way that they can be readily identified as being the Company's property and the Customer agrees that any goods of a particular make and type distributed by the Company shall be presumed to have been supplied by the Company unless the Customer can prove to the contrary;
- 6.2.3 The Customer must at its own expense insure and keep insured all goods which are the Company's property against all the risks which it would be prudent to insure against with a reputable insurance company and must, if the Company so requests cause the Company's interest to be noted on the policy or policies of insurance which shall be made available to the Company for inspection;
- 6.2.4 The Customer may sell the goods in the ordinary course of business and on commercially reasonable terms.
- 6.3 Where the goods are situated on a third party's premises the customer shall oblige such third party to ensure that at all times the Customer is in compliance with its obligations under 6.2.2 above and to agree to permit the Company to enter upon the third party's premises and remove the goods should the Company have revoked the Customer's authority to sell them.
- 6.4 The Company may at any time by written or oral notice revoke as to all or any goods not previously sold by the Customer the authority given to it under Clause 6.2.4. Upon such revocation the Customer shall hold such goods to the Company's order; shall not dispose of them in any way without the Company's consent and shall permit the Company to enter upon any premises where the goods are located and to recover the same.
- 6.5 The proceeds of any goods disposed of with the Company's consent after such revocation shall be transferred to the Company absolutely without any deduction whatsoever, the Customer having no interest in them or in any part of them, and until such transfer shall be held on trust for the Company as its absolute property. Such proceeds shall be kept separate from the Customer's own monies and from all other accounts (the Customer being required to open a separate account for receiving such proceeds of sale and to notify the Bank where the account is held of the Company's interest in the proceeds of sale). When the Company has actually received payment for the goods so disposed of the Company shall credit the Customer's account with an amount equal to such a payment, appropriating it in such manner as the Company shall choose.
- 6.6 For the purpose of Clause 6.5 "proceeds" means money, right or other thing tangible or intangible, received in exchange for the goods.

## 7 WARRANTIES AND LIABILITY

- 7.1 No condition or warranty is given by the Company or to be implied as to the life of the Goods or that they will be suitable for any particular purpose or for use under any specific conditions even where the same have been made known to the Company.
- 7.2 Subject as expressly provided in these Terms, and except where the Goods 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.
- 7.3 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer for any reason whatsoever which arises out of or in connection with the supply of the Goods or their use or resale by the Customer. The Company shall not be liable to the Customer or any third party for any indirect or consequential loss or damage or for any loss of profit.
- 7.4 The Company shall not be liable to the Customer 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 Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.
- 7.5 The Customer shall indemnify the Company against all actions, claims or demands by third parties against the Company howsoever arising in respect of or in connection with the Goods or the Contract by the Company to supply the same upon these Terms.

## 8 BREACH AND INSOLVENCY

- In the event that:
- 8.1 the Customer shall commit any breach of the Contract and fail to remedy such breach (if capable of remedy) within a period of 30 days from receipt of notice in writing from the Company requesting such remedy; or
- 8.2 any distress or execution is levied upon the goods or property of the Customer; or
- 8.3 the Customer offers to make any arrangements with or for the benefit of its creditors or commits any act of bankruptcy or, being a limited company, has a Receiver, Administrative Receiver or Administrator appointed of the whole or any part of its undertakings property or assets; or
- 8.4 any order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Customer (save for the purposes of reconstruction or amalgamation without insolvency and previously approved in writing by the Company) then and in any such case the Company shall be entitled without prejudice to its other rights hereunder forthwith to suspend all further deliveries to the Customer whether under this Contract or otherwise until the default has been made good or to terminate the Contract or any part thereof. Notwithstanding any such termination, the Customer shall pay the Company for all goods delivered up to and including the date of termination.

## 9 NOTICES

- 9.1 Any notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

## 10 GENERAL

- 10.1 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.2 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part of the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.
- 10.3 The Contract shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.



**CIFER**  
Data Systems Limited