

## Terms & Conditions

### 1. REFERENCES

1.1 In these terms and conditions, the following words shall have the following meanings unless the context otherwise requires:

“Customer”	the person, firm or Seller purchasing Goods and Services from the Seller;
“Goods”	the products that the Seller is to supply to the Customer in accordance with these Conditions;
“Price”	the price payable for the Goods and the Services in accordance with Condition 3;
“Seller”	MossIT whose registered office address is Unit D4A Mill 1, Pleasley Vale Business Park, Outgang Lane, Pleasley Vale, Mansfield, Nottinghamshire. NG19 8RL;
“Services”	those services that the Seller is to supply to the Customer and/or supply of the Goods, and

1.2 These Conditions are the only conditions upon which the Seller is prepared to deal with the Customer and they shall govern any contract with the Customer for the sale, purchase and supply of Goods and Services to the entire exclusion of any other express or implied conditions.

1.3 These Conditions may only be modified by a variation in writing signed on behalf of the Seller by a director or other authorised representative of the Seller and no other action on the part of the Seller (whether delivery of any Goods, supply of any Services or otherwise) shall be construed as an acceptance of any other conditions.

1.4 These Conditions (as modified in accordance with Condition 1.3) and the Seller’s quotation and/or acceptance of the Customer’s order (as applicable) embody the entire agreement of the Seller and the Customer in relation to the sale, purchase and supply of the Goods and Services quoted for by the Seller and/or ordered by the Customer (as applicable) and supersede any prior promises, statements, representations or undertakings of either party in respect thereof, provided that none of these Conditions shall in any way exclude or limit either party’s liability for any fraudulent misrepresentation or fraudulent concealment made by that party.

1.5 No employee, agent or sub-contractor of the Seller is authorised to make any representations concerning the Goods or the Services unless confirmed by a director or other authorised representative of the Seller in writing and the Customer acknowledges that it does not rely on any such representations that are not so confirmed.

1.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## **2. GOODS / SERVICES**

- 2.1 The Seller warrants that: (i) the Goods shall at the time of delivery be free from defects in workmanship and materials and (ii) due care and skill shall be exercised in the supply of any Services. If any Goods or Services do not conform to the warranty given under this Condition 2.1, the Customer will be entitled to the benefit of any warranty or guarantee as given by the relevant manufacturer of the goods supplied by the Seller.
- 2.2 All times or dates given for delivery of the goods are given in good faith, and shall not be of the essence or any contract.
- 2.3 Unless otherwise agreed the Seller may deliver in parts and any delay, default or non delivery in respect of any part by the Seller shall not entitle the Customer to cancel the order.
- 2.4 The Customer will pay for parts when due. Failure to do so shall entitle the Seller to withhold any further goods and the Customer shall be liable for any costs incurred by the Seller.
- 2.5 The Goods will be delivered to the customers address unless otherwise agreed with the Seller in writing.

## **3. PRICE**

- 3.1 In respect of any contract with the Customer to which these Conditions apply, the Price for the Goods and any Services to be supplied under that contract will be:
  - 3.1.1 in respect of the Goods, as set out in the Seller's quotation for the Goods or, in the absence of such a quotation, as set out in the Seller's price list applicable at the date on which the Goods are despatched to the Customer or, if the Goods are to be collected by the Customer, the date on which the Seller notifies the Customer that the Goods are ready for collection; or
  - 3.1.2 in respect of the Services, as set out in the Seller's quotation for the Services or, in the absence of such a quotation, as set out in the Seller's price list applicable at the date on which the Services are provided.
- 3.2 The Seller reserves the right, by giving written notice to the Customer at any time before delivery of the Goods, to increase the Price of the Goods and/or Services (as applicable) to reflect any increase in the cost to the Seller of supplying the Goods and/or Services that is due to any factor beyond its reasonable control (such as, without limitation, foreign exchange fluctuation, currency regulation, alteration of duties or significant increases in the cost of the labour, goods, or the delivery dates or quantities of the Goods and/or Services that are requested by the Customer or any delay caused by any of the Customer's instructions or the Customer's failure to give the Seller adequate information or instructions).
- 3.3 The Price is exclusive of value added tax, which will be added to or charged on invoices at the appropriate rates.

## **4. PAYMENT**

4.1 Unless otherwise agreed in writing:

4.1.1 the Seller may invoice the Customer for the Price on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongly fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Customer for the Price at any time after the Seller has notified the Customer that the Goods are ready for collection or the Seller has tendered delivery of the Goods (as applicable); and

4.1.2 the Customer shall pay the Price of any Goods and Services in accordance with the payment terms agreed and on the Seller's relevant invoice.

4.2 Where any sum owed by the Customer to the Seller under any contract to which these Conditions apply is overdue:

4.2.1 interest will be chargeable on the sum due before and after judgment, accruing on a day-to-day basis at an annual rate of eight per cent above the Bank of England base rate from time to time applicable, until the sum due is paid in full and cleared funds; and

4.2.2 the Seller may withhold the delivery or supply of any Goods and/or Services due to be made to the Customer under any contract to which these Conditions apply until arrangements as to payment or credit have been established which are satisfactory to the Seller.

4.3 If the Customer fails to pay for any Goods and/or Services in accordance with these Conditions, the Seller may bring an action against the Customer for the Price of those Goods at any time, even though the property in the Goods has not passed to the Customer.

## **5. RISK AND PROPERTY**

5.1 The risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer or any carrier acting on the Customer's behalf. If the Seller is unable to despatch the Goods because of the Customer's acts or omissions or the Customer fails to take delivery of the Goods or fails to collect the Goods from the Seller's premises on the date specified (as applicable), the risk in the Goods shall still pass to the Customer at the time when the Customer should have collected the Goods or taken delivery.

5.2 The property in the Goods shall not pass to the Customer until the total price of:

5.2.1 the Goods and the Services; and

5.2.2 any other goods and/or services supplied under any contract with the Customer to which these Conditions apply or any other contract between the Seller and the Customer for which payment to the Seller remains due,

is paid in full and cleared funds.

- 5.3 Until such time as the Price for any Goods has been paid in full and cleared funds:
- 5.3.1 those Goods shall be held by the Customer in fiduciary capacity and stored by the Customer at its premises in such a manner that they do not suffer any deterioration in condition from that in which they were delivered and are clearly identifiable as the Goods of the Seller and shall be kept separate from other goods whether or not supplied by the Seller;
  - 5.3.2 the Customer shall insure those Goods to the full replacement value of the Goods and shall note the Seller's interest on the policy;
  - 5.3.3 the Customer shall not pledge or charge in any other way any of those Goods and, if the Customer breaches this clause 5.3.3, the Price for those Goods shall become immediately due and payable; and
  - 5.3.4 those Goods shall be handed over to the Seller on demand and the Seller: (i) shall be entitled to re-take possession of them without prejudice to any of its other rights against the Customer; and (ii) is hereby granted a licence to enter into the Customer's premises for such purposes.
- 5.4 If the Customer sells any Goods prior to paying the Price due in respect thereof in full and cleared funds: (i) the Customer shall hold the proceeds of sale on trust for the Seller and shall immediately pay the proceeds of sale into a separate bank account for such purposes; and (ii) the Seller shall be entitled to call upon the Customer to assign all claims that the Customer may have against the purchaser(s) of those Goods.

## **6. CANCELLATION**

- 6.1 Orders for Goods and Services that have been accepted by the Seller can only be cancelled by the Customer with the prior written agreement of the Seller and on the condition that the Customer shall indemnify the Seller in full against all loss (including, without limitation, loss of profit), damage, costs (including, without limitation, the cost of all labour and materials used) and expenses incurred by the Seller as a result of such cancellation.
- 6.2 The Seller reserves the right to charge 100% for goods cancelled, 50% of any service days cancelled within 7 days notice from scheduled delivery date, and 20% of any service days postponed within 7 days notice from scheduled delivery date.

## **7. FORCE MAJEURE**

- 7.1 If the Seller is prevented from or hindered in delivering any Goods or supplying any Services through any circumstances beyond its reasonable control (including, without limitation, strike, lock-out or other industrial action, war, fire, Act of God or prohibition or enactment of any kind), the Seller shall have the right to cancel or to reduce the volume of the Goods or Services to be supplied without any liability to the Customer.

## **8. ASSIGNMENT AND SUB-CONTRACTING**

- 8.1 The Seller shall be entitled to assign, transfer or sub-contract all or any of its obligations under any contract with the Customer to which these Conditions apply.

## **9. TERMINATION AND SUSPENSION**

- 9.1 Without prejudice to any other rights or remedies available to the Seller, the Seller may terminate any contract with the Customer to which these Conditions apply or suspend or cancel delivery of any Goods and/or any Services to be supplied or recover possession of any Goods supplied under such contract without any liability to the Customer if:

9.1.1 any sum owed by the Customer under that contract, any other contract with the Customer to which these Conditions apply or any other contract between the Seller and the Customer is overdue;

9.1.2 the Customer breaches any term of that contract and (if capable of remedy) does not remedy such breach within seven days of being requested to do so by the Seller;

9.1.3 the Customer passes a resolution or suffers an order of a court to be made for its winding-up, a receiver, administrative receiver or administrator shall be appointed over all or any part of the Customer's undertaking or assets, the Customer goes into liquidation or ceases to trade or a petition for the appointment of an administrator shall be presented in respect of the Customer; or

9.1.4 in the reasonable opinion of the Seller, the Customer is for any other reason unable to meet its obligations under that contract.

- 9.2 Upon termination for any reason of any contract with the Customer to which these Conditions apply, the Price payable for any Goods and/or Services supplied under such contract for which the Seller has not received payment prior to termination shall become immediately due and payable.

- 9.3 The Customer may by notice in writing immediately terminate the Contract if:

9.3.1 The Seller is in breach of any of the terms of the Contract which in the case of a breach capable of remedy is not remedied by the Seller within 21 days of receipt of a notice from the Customer specifying the breach and requiring its remedy;

9.3.2 The Seller makes a voluntary arrangement with its' creditors or become the subject of an administration arrangement order or go into liquidation (otherwise than for the purposes of a genuine reconstruction or amalgamation) or an encumbrance takes possession or a receiver is appointed over any of our property or efforts.

9.3.3 Any notice required by Contract to be given by either party to the other shall be in writing and shall be served by sending the same by registered post or recorded delivery to the last known registered office or address of the other party and any receipt issued by the postal authorities shall be conclusive evidence of the fact and date of posting of any such notice.

## **10. THIRD PARTY RIGHTS**

10.1 These Conditions do not create any right under any contract to which these Conditions apply that is enforceable by any person who is not a party to such contract.

## **11. GOVERNING LAW**

11.1 The laws of England shall govern any contract with the Customer to which these Conditions apply and the English courts shall have the exclusive jurisdiction (to which the Customer hereby irrevocably submits) to resolve any disputes arising out of any such contract.

## **12. DATA**

12.1 The Seller does not accept liability for backup storage. The customer agrees the goods provided by way of order and is solely responsible for backup storage.

## **14. CONFIDENTIALITY**

14.1 The Customer must not disclose any trade secrets or other information of a confidential nature belonging to or relating to the Seller or its business or in respect of which the Seller owes an obligation of confidence to any third party gained as a result of trading with the Seller except as required by law.

14.2 The Seller acknowledges that the Customers business is confidential. The Seller may have access to and have an intimate knowledge of confidential information. The Seller acknowledges that the disclosure of any trade secrets or confidential information to actual or potential competitors of the Customer, would place the Customer at a serious competitive disadvantage and would do serious damage, financial and/or otherwise, to the business and business development and would cause immeasurable harm.

14.3 The Seller therefore agree to not:

- a) divulge or communicate to any person, company, business entity or other organisation any information relating to the Customer; or
- b) use the Customer's information for our own purposes or for any purposes other than those of the Customer; and
- c) disclose any confidential information through any failure to exercise due care and diligence.

## **15. STATUS & AUTHORITY**

15.1 The Seller acknowledges that they are engaged as an independent Seller to the Customer and nothing shall render engineers, employees, agent partner of the Customer.

## **16. DISPUTES**

16.1 In the unlikely event of a dispute, the Customer must in the first instance put their complaint in writing and give if necessary, the Seller the opportunity to rectify the situation. The Customer agrees to adhere to these Terms and Conditions and to not challenge them in a Court of law.

## **17. GENERAL**

17.1 If at any time one or more of the above conditions becomes in whole or in part void, invalid or unenforceable the remainder of these conditions shall remain valid and enforceable.

17.2 These Terms and Conditions shall be governed and interpreted in all respects by English law and the parties submit to the non-exclusive jurisdiction of the High Court in England, but these Terms of Business may be enforced in any court of competent jurisdiction.

17.3 The Price for any Goods and/or Services to be supplied by the Seller is calculated on the basis that the above Conditions will apply. Any customers requiring prices to be quoted on a different basis should inform the Seller.