

Terms and Conditions

1. Definitions

- 1.1 “Company” shall mean Emerdis Limited.
- 1.2 “Buyer” shall mean the organisation, or individual, from which orders are received by Company.
- 1.3 “Products” shall mean items, or services, supplied by Company.
- 1.4 “Order” shall mean an order placed with Company specifying Products required by Buyer.
- 1.5 “Price” shall mean the price of the products (as further defined in Clause 3 below) as per the relevant Proforma Invoice and in accordance to The Incoterms™.

2. Acceptance of Orders

- 2.1 Order shall be accepted only upon and subject to Company’s current Terms and Conditions of Sale which are complete and exhaustive. These Terms and Conditions of Sale shall prevail over any terms or conditions which Buyer may seek or have sought to impose. Any conditions in the Order will be binding only so far as they are compatible with these Terms and Conditions and are expressly accepted by Company in writing.
- 2.2 If Buyer cancels an Order for Products which are specified as “non-standard” ,“M” or “S” and which do not appear on Company’s Website then Company shall be entitled to claim the value of the Products. Upon alteration or cancellation of any Order (for any Product) Company shall have the right to realise at its discretion all monies, securities, valuables, or goods pledged with or held by it on behalf of Buyer and to apply the proceeds in or towards the satisfaction of such claim for damages and Buyer shall have no claim whatsoever against Company in this connection.
- 2.3 Clerical errors may be corrected by Company at any time.

3. Product Pricing

- 3.1 Order is accepted on the condition that the prices of the Products shall be those in force at the time of order acceptance except in the case of a specific quote raised by Company in which case the quoted Price is firm for 30 days from date of quotation. All prices and other sums payable by virtue of these Terms and Conditions are subject to the addition of Value Added Tax (VAT) or any other ancillary costs as required to be paid by law.

4. Product Specification and Performance

- 4.1 Buyer shall within thirty (30) working days of the receipt (or unless specified by means of a separate contract) of Products undertake tests to ensure that Products satisfy the specification as set out in sales, marketing or other literature provided by Company or in the operating manual supplied with the Products and shall notify Company, in writing, within the thirty-day period day of any failure of Products to meet specification. No liability shall attach to Company until such time as Company at its absolute discretion is satisfied on examination of the Products that any failure to meet specification arose solely from faulty materials or workmanship or negligence on the part of Company.

5. Proprietary rights in software Product

- 5.1 Buyer acknowledges that proprietary rights in any Third-Party Software supplied including, but not limited to, any title or ownership rights, patent rights, copyrights, and trade secret rights, shall, at all times and for all purposes, remain with the Third Party Software owner. It is Buyer’s responsibility to comply with all terms and conditions of any licence attaching to Third Party Software supplied including, if required, the completion and return of a Third-Party Software licence. Non-compliance with such terms may result in Buyer being refused a software license or having a licence revoked by the Software proprietary owner. Buyer agrees to indemnify Company in respect of all costs, charges or expenses incurred by Company as a result of any breach by Buyer of such terms and conditions. Title and ownership of software Product or any Third-party software licensed to Buyer is not transferred to Buyer under any circumstances.

6. Delivery of Product

6.1 Buyer shall at the time of ordering from Company specify in writing the date, address, and any specific instructions for the delivery of Products.

6.2 Company shall use reasonable endeavours to supply and deliver Products in accordance with any such date, address and specific instructions specified by the Buyer however time shall not be of the essence. Company shall not be liable for its inability to deliver Products if prevented from doing so by any cause beyond its reasonable control.

6.3 The method of packing and delivery shall be at the discretion of The Company. Delivery costs are not included in Price unless stated and in accordance to The Incoterms™.

6.4 Buyer will advise Company, by e-mail, on the day of receipt of goods of any damage to Products received or any discrepancy between Products ordered and Products received.

7. Risk & Title

7.1 Upon delivery to Buyer, or any carrier or agent acting for Buyer, Products shall be at the Buyers risk but notwithstanding the risk in the goods shall pass from Company to Buyer upon delivery of such goods to Buyer. However, notwithstanding delivery and the passing of risk in the goods, title, and property in the goods, including full legal and beneficial ownership, shall not pass to Buyer until Company has received in cash or cleared funds payment in full for all goods delivered to the Buyer under this and all contracts between Company and Buyer for which payment of the full price of the goods there under has not been paid.

Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between Company and Buyer under which the goods were delivered.

7.2 Until Price has been paid Buyer shall be able to readily identify Product. Company shall be entitled to require Buyer to deliver Products to Company on demand.

7.3 Should Buyer fail to deliver Products on demand Company, or its agents, shall be entitled to enter any premises where Products are stored or are reasonably thought to be stored and are hereby authorised to affect such entry on the Buyers behalf if necessary.

7.4 Company shall have the right to dismantle any product entity or system into which the Products have been incorporated and Buyer shall indemnify Company in respect of its costs and expenses of so doing and in respect of any third-party claim arising as a result.

7.5 The Buyer may sell the Products by way of bona fide sale in the ordinary course of business but may not otherwise deal with, sell, part with possession of, change the character of, reconfigure, convert, handle, or otherwise dispose of any of the goods until the Price has been paid. Where any of the Products are sold to a third party before the Price has been paid the sale shall constitute a sale of The Company property by the Buyer and accordingly the Buyer shall hold the proceeds on trust for The Company.

8. Product returns

8.1 Company will not accept any products returned to it for credit or repair without issuing prior written consent. In the event Company agrees to the return of the Products they shall be packed, labelled, and despatched at the cost of Buyer. A handling charge of at least 20% will be made on all returns – Company's errors and omissions excepted. Any Product accepted for credit must be complete, un-used and pristine condition including original packing. Until the Products are acknowledged as having been received by Company they shall remain at Buyer's risk. If Product is returned in an unacceptable condition, it will be returned to Buyer at Buyers cost.

9. Product Warranty

9.1 Company warrants that Products shall be free from defects in materials or workmanship. The period of such warranties shall be as provided by the manufacturer unless Buyer is notified in writing. The warranty period shall commence on the date of despatch of Products to Buyer.

9.2 In the event of any established breach of warranty Company will arrange for repair or replacement, in line with manufacturer warranty provisions and arrangements, of any defective Products. Buyer shall be liable for the delivery charges incurred in returning the defective Products to Company, or manufacturer repair/warranty address, but shall not be liable for the costs of the repair or the replacement of the Products or the delivery charges of the repaired/replacement Products to Buyer.

9.3 Where Company replaces, or has repaired, any defective Products the warranty on such Products shall continue in effect for the remainder of the unexpired term of the warranty commencing from the date of despatch of the defective Product.

9.4 The Company shall not be liable, nor enter into warranty claim discussions, under any circumstances: -

(a) For any defect caused by fair wear and tear.

(b) When Products are subjected to abnormal usage or where the defect is due to the act, neglect, or default of anyone other than Company.

(c) For the replacement, renewal, or repair of any of the Products or part or parts thereof where the replacement renewal or repair becomes impossible as a result of Force Majeure or any other circumstances beyond Company's control.

(d) Where the Products or any component parts thereof are the subject of a separate guarantee given by a third party the benefit thereof is hereby assigned by Company to Buyer.

9.5 Buyer acknowledges that Company offers no specific warranties in respect of fitness for any particular purpose of the Products and that any such warranties are hereby expressly excluded, and Company shall not (except as set out above) be under any liability whatsoever in respect of defects in Products delivered or for any injury, damage or loss resulting from such defects from any cause whatsoever.

9.6 Buyer shall have no claim for loss of profits or contracts or consequential loss which may be suffered by Buyer or any third party arising out of such breach of warranty.

10. Product Storage

10. 1 In the event that written dates, addresses and general instructions for delivery of the Products are not notified to Company at the time of placing the Order Company shall be entitled to store the Products and Buyer shall be liable for the reasonable costs of such storage.

11. Patent Claims

11.1 Buyer shall notify Company of any claim received by Buyer alleging an infringement of patent or other intellectual property rights of a third party. The Company will refer such to the manufacturer of Products. Buyer shall co-operate with Company in defending any patent or other right claimed in respect of the products. Company shall not be liable to Buyer in respect of patent infringement or claim based upon the use of the Products or a part thereof modified for use in connection with not supplied by Company or in a way for which Products were not designed.

12. Force Majeure

12.1 Company shall not be liable for any failure to supply and/or deliver Products or for any damage to or defect in the Products caused by fire, theft, riot, war, embargo, labour disturbances, Acts of God or any other reason beyond The Company' control including any act or default of Company own suppliers or third parties. No consequences of any such event shall give rise to the recession of the Contract unless in the opinion of Company the Contract becomes incapable of performance.

13. Representations

13.1 No agent or other party has authority to make oral representations prior to or after placing an Order and Buyer has not relied upon any oral representations in placing an Order nor has any agent of either party authority to vary or modify the Terms and Conditions herein which may only be varied or modified in writing by Company.

14. Currency Fluctuation

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15. Default

15.1 If Buyer shall default in the performance of any of its obligations under the contract, Company shall on giving Buyer notice in writing have the right at Company's option and without prejudice to any other right or remedies Company may have under the terms of the Contract to take all or any one of the following actions: -

- (a) Cancel all or any part of any discount which might otherwise have been due under the terms of the Contract.
- (b) Suspend any outstanding delivery of Products or part thereof until such default shall have been made good.
- (c) Recover possession of and remove from Buyers' premises that part of Products to which the default relates, and Buyer shall allow Company access to its premises and such facilities as may be necessary to enable Company to do so. No waiver or delay in exercise by Company of its right under this Condition shall be deemed to imply acceptance of or condemnation of the default any subsequent default.

15.2 If Buyer shall become bankrupt, go into liquidation, become insolvent or have a receiving order made against it or compound with its creditors or carry on its business under a Receiver for the benefit of a creditor or creditors Company shall be at liberty without prejudice to any other or further remedies Company may have under the Contract: -

- (a) To terminate the Contract forthwith by notice in writing to the Buyer or Liquidator or Receiver; and
- (b) To enter Buyer's premises and recover and remove any or all the Products or parts thereof in respect of which full payment of the price of the Products has not been made to Company and Buyer shall afford The Company free access thereto and to all facilities as may be necessary to enable Company so to do.

16. Liability

16.1 Company shall be liable for loss, injury and damage which directly arises from and to the extent that it is caused by Company's negligence. Otherwise, the Company shall not be liable for any costs, claims, loss, damage, or injury of whatsoever nature or howsoever caused.

16.2 Without prejudice to 17.1 Company shall not in any event be liable for consequential or indirect loss or damage however arising.

16.3 Buyer shall fully indemnify Company against all claims and demands made upon Company by reason of any such loss, injury or damage for which Company is not liable hereunder.

The Buyer shall pay to Company forthwith on demand all expenses, costs, or charges, including but not limited to all legal fees incurred as a result of or in any way connected with any breach of these Conditions. For the avoidance of doubt all legal fees payable to Company hereunder shall be paid by Buyer on a full indemnity basis.

17. Legal Construction

17.1 Except where otherwise stipulated in writing the regulations, arrangements and agreements between the parties shall be governed by the laws of England. Service of any notices during such arbitration or Court proceedings to the address of Buyer given in the Contract shall be valid and sufficient.

17.2 Any references in these Terms and Conditions to the masculine gender shall be deemed to include the feminine and neuter genders.

17.3 Failure or neglect by Company to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of Company rights hereunder nor in any way effect the validity of the whole of or any part of this Contract nor prejudice Company's rights to take subsequent action.

17.4 In the event that any of these terms, conditions or provisions shall be deemed to be determined invalid, unlawful, or unenforceable to any extent such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

17.5 The headings to these Terms and Conditions are inserted for convenience of reference only and are not intended to be part of or affect the meaning or interpretation of any of the terms and conditions of this Contract.

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