

BUSINESS CUSTOMER TERMS AND CONDITIONS OF SALE

These conditions are the only contractual terms upon which Microspec Computers Limited whose registered office is at 90 Grahams Road, Falkirk, Stirlingshire, FK2 7DL (registered company number 110199 and registered VAT number GB 502 6841 66) (the "Company") is prepared to deal with its customers (whether they are based within or outside the UK) and will govern all contracts for the supply of goods, software and/or services formed by our acceptance of a customer order or a customer's acceptance of our quotation to the exclusion of any other contractual terms including any which a customer attempts to introduce.

1 GENERAL

1.1 In these conditions:

- 1.1.1 "you" means the person submitting an order for Products.
- 1.1.2 "Goods" means computer equipment and/or other equipment to be supplied under these conditions as stated on our quotation or order acknowledgement, as appropriate.
- 1.1.3 "Products" means Goods, Software and/or Services.
- 1.1.4 "Software" means the computer programs to be supplied under these conditions as stated on our quotation or order acknowledgement, as appropriate.
- 1.1.5 "Services" means consultancy, technical services, support, maintenance and training.

1.2 The contract for supply of Products ("Contract") will be formed upon your acceptance of our quotation or our acceptance of your order. However we only agree to sell products to you subject to their availability and accordingly the contract may be cancelled by us in writing without liability to you if products cannot within a reasonable period be acquired by us for resale. Acceptance of an order by us can only be made in writing whether in hard form or electronically.

1.3 We may prior to accepting any order carry out a credit check and then will only accept your order if we are satisfied with the results of such check. You confirm that you are happy for us to carry out such check.

1.4 These conditions may only be modified by a written variation signed by one of our directors. No other action by us (including delivery of Products) is to be construed as our acceptance of any other conditions, whether set out in your general conditions of purchase or in any other documents.

1.5 These conditions together with any matters referred to on our quotation or order acknowledgement (as appropriate) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications.

1.6 Any omission or error in any sales literature, web page or site, order form, quotation, price list, order acknowledgement, despatch note, invoice or other document (whether written, oral or in electronic form) issued by us may be corrected by us without liability.

1.7 The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from the Contract.

1.8 Clause headings are for convenience only and do not affect the interpretation of these conditions. Reference in these conditions to a statutory provision will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. Words in the singular include the plural and vice versa.

1.9 The carrying out by us of any support and maintenance of Goods will be governed by our standard support terms to the exclusion of any other terms.

1.10 Your attention is in particular drawn to conditions 2, 3, 8 and 9.

2 WARRANTY

2.1 We warrant that goods will at the time of delivery be free from defects in workmanship and materials and correspond in all material respects with the relevant product specification. If any goods do not conform to this warranty then we will at our option remedy the defect in question, replace the defective Goods or refund the price of the defective Goods. This remedy is the only remedy available to you for a breach of this warranty and is only available on condition that:

- 2.1.1 you notify us in writing of the defect within 7 days of delivery or, in the case of defects not apparent on reasonable inspection, within 1 month of delivery;
- 2.1.2 defective Goods are returned to us within 7 days of written notification referred to in condition 2.1.1 or, in the case of defects not apparent on reasonable inspection, within 1 month of delivery; and
- 2.1.3 our examination of defective Goods at our premises discloses to our satisfaction that the defect has not been caused by (a) your misuse, neglect, failure or inadequate maintenance, accident, improper storage, installation or handling, or (b) repair or alteration by a third party. You will refund to us the cost of any such examination where the remedy referred to under this condition is not available together with, at our discretion, a "restocking fee" of up to 20% of the price of the Goods to cover our administrative expenses.

2.2 We will so far as we are reasonably able pass on to you the benefit of all warranties received by us from the manufacturer of the products.

2.3 Where Goods are returned under condition 2.1:

- 2.3.1 we will bear the cost of delivering any repaired or replacement Goods to you (subject to levy of any repacking fee due under condition 2.4);
- 2.3.2 the risk in the returned Goods shall pass to us upon receipt by us of the relevant goods.

2.4 Goods returned by you to us for any reason must be returned in their original packaging in substantially the same condition as they were delivered to you and must bear a return identification number clearly visible on the exterior (such number to be obtained from us prior to return of Goods by you). We will not accept liability for Goods returned without such identification number. We may levy a fee for repackaging Goods returned to us in a poorly packaged state.

2.5 Software (and its use) will be subject to the terms of the manufacturer's licence contained within the software itself (and accessed upon loading) or within or upon the packaging of the software. Such licence will state the extent of the manufacturer's liability for the software. We cannot accept any liability whatsoever for any defect or error in the same other than where this has been caused by our negligence or default.

3 LIMITATION OF LIABILITY

3.1 Nothing in these conditions affects the statutory rights of a consumer as defined under the unfair contract terms act 1977. All conditions, warranties or representations not contained in these conditions and implied by statute or law are excluded or restricted to the fullest extent permitted.

3.2 This condition and condition 2 states our only liability to you under or in connection with the contract.

3.3 Without prejudice to condition 3.4, we will not be liable to you by way of representation (unless fraudulent), common law duty or under any express or implied term of the contract for:

- 3.3.1 any indirect, special or consequential loss or damage or loss of profits (whether caused by our negligence or that of our employees, agents or otherwise) arising in connection with the supply of products and related services or their use by you.
- 3.3.2 any loss or retrieval of data, it being your responsibility to keep adequate back-up copies of data and programs held or used by you or on your behalf.

3.4 Our entire liability in connection with the contract will not exceed the purchase price of the products in question.

3.5 Notwithstanding any other term of these conditions our liability to you for:

- 3.5.1 death or personal injury resulting from our negligence or that of our employees, agents or subcontractors
- 3.5.2 damage for which we are liable to you under part 1 of the consumer protection act 1987 is not limited save that this condition 3 shall not confer a right or remedy on you to which you would not otherwise be entitled.

4 PRICE

4.1 The price for Products will be that stated on our quotation or order acknowledgement (as appropriate) or, if no price is stated, our list price last published on the date upon which Products are dispatched to you. We may vary the price to the extent that the cost to us of acquiring or supplying Products is increased between the date of quotation or order acknowledgement (as appropriate) and delivery including, without limitation, increases in the costs of carriage packaging or insurance or arising from a change in exchange rate, a change in delivery dates quantities or specifications for Products requested by you or delay caused by your instructions.

4.2 Prices quoted by us are unless otherwise stated exclusive of (a) value added tax or any similar taxes, levies or duties, (b) the costs of carriage, delivery, packaging and insurance, and (c) our handling charges, all of which will be added to or charged on invoices at the appropriate rates and paid by you.

5 PAYMENT

5.1 Unless otherwise agreed in writing, you must pay for Products prior to their despatch to you by such means as we may notify you of. Where the Products are supplied on credit terms granted at our discretion, payment will be made by you within thirty days of the invoice date. Payment by cheque is deemed to have been made only upon such cheque being met on first presentation.

5.2 Where any payment to be made by you under the Contract is not made by its due date then, without prejudice to our other rights and remedies, we may:

5.2.1 charge interest on the outstanding amount (as well after as before judgement) on a day to day basis at the statutory rate from time to time applicable until the sum due is paid.

5.2.2 withhold further deliveries, suspend performance of the Contract, cancel any credit terms granted by us to you and/or withhold guarantees on previously supplied Products until arrangements as to payment or credit have been established on terms which are satisfactory to us.

5.3 The applicable fee for all training course places must be paid for in full at the time of booking.

6 TERMINATION

Where Products are to be delivered in instalments, each delivery constitutes a separate contract and failure by us to deliver any one or more of the instalments in accordance with these conditions or any claim by you in respect of any one or more instalments will not entitle you to treat the Contract as a whole as repudiated.

7 ACCOUNT OPENING

The payment of our first invoice will be required in advance after the opening of any new account. Each new client shall fill in the account opening form and provide the Company with a signed copy of these terms and conditions, details of any relevant bank account and a blank copy of your letterhead.

8 DELIVERY

8.1 Delivery of Products shall be made by us to the place designated by you in the accepted order or quotation, as appropriate. Delivery will be made during normal business hours.

8.2 Unless otherwise expressly agreed in writing, any delivery date or time specified by us in any quotation, despatch note or otherwise is a best estimate only and we will not be liable to you for any loss or damage sustained by you as a result of our failure to comply with such time scale.

8.3 If you pass or have a resolution passed for your winding-up, a receiver is appointed over the whole or any part of your undertaking, an administration order is made against you, you enter into or propose to enter into any arrangement with your creditors, become unable to pay your debts (or have no reasonable prospect of so doing), suffer a bankruptcy order or commit a material breach of the Contract, then we may without prejudice to any other right immediately terminate the Contract, suspend or cancel further delivery and/or recover Products from you for which payment in full has not been received.

9 RISK AND TITLE

9.1 Risk in Products shall pass to you upon delivery.

9.2 Title to Software shall not pass to you. Title to Goods shall not pass to you until their full price and the price of any other goods which are the subject of any other contract between you and us has been paid. Until title passes, Goods shall be:-

- 9.2.1 stored by you at your premises in such a manner that they are clearly identifiable as being our property and be kept separate from any other goods whether or not supplied by us;
- 9.2.2 handed over to us on demand. We may re-take possession of such Goods and may enter onto your premises for such purpose.

9.3 If you fail to pay for any Products in accordance with these conditions we may bring action against you for the price of the Products at any time notwithstanding that title in Products has not passed to you.

10 DAMAGE OR LOSS IN TRANSIT

We shall repair or replace, free of charge any Products damaged or lost in transit where delivery has been made by our carrier, provided that you give us and the carrier written notification of such damage or loss within 3 days of the date when the products were received or would in the ordinary course of events have been received.

11 APPARENT DEFECTS

11.1 If the quantity of Products delivered does not correspond with the quantity required to be delivered in that consignment you may not reject that consignment and may only:-

- 11.1.1 (if the quantity delivered exceeds the contract quantity) return the excess or retain the whole, in which latter case the price shall be adjusted at the contract rate then prevailing;
- 11.1.2 (if the quantity delivered is less than the contract quantity) require a further delivery of Products to make up the deficiency or (at our option) a refund of the appropriate part of the purchase price.

11.2 These rights are only available however where condition 2.1 is also satisfied.

11.3 You shall have no claim for the fact that Products delivered are of the wrong description unless condition 2.1 is also satisfied.

12 INSTALLATION

We may for additional charge install and/or commission Products at your premises or elsewhere.

Condition 3 shall apply to the provision of any installation or commissioning. Notwithstanding that we may be contractually committed to install and/or commission Products, Products shall be treated as delivered to you when the same are presented by us at the agreed delivery destination.

13 SPECIFICATION

13.1 All drawings, photographs, illustrations, specifications, performance data, dimensions and the like used by us in sales literature, on web pages or other documentation have been provided by us in the belief that they are accurate. However, they do not constitute a description of the Products, shall not be taken to be representations made by us and are not warranted to be accurate.

13.2 The specification for Products may be changed by the manufacturer at any time up to delivery and provided such change does not materially alter the functionality of Products you may not cancel your order. We will not be liable for any loss or damage suffered in connection with any change. We will use our reasonable endeavours to advise you of any such impending variation as soon as we are able or upon our receiving notice of the same (as appropriate). You must check specifications for products prior to making an order.

13.3 Whilst we will make all reasonable efforts to advise on the correct application of the Products, it remains your sole responsibility to ensure the Products are suitable for your application. We will not be responsible for the failure of Products which may be due to any incorrect or inappropriate usage or for any consequences arising therefrom.

14 INTELLECTUAL PROPERTY RIGHTS

No right of intellectual property in any Product is granted to or vested in you other than the right to use the same. You will fully indemnify us against all liabilities, costs and expenses resulting from any claim that our use of any specification provided by you in connection with the Contract infringes the rights of any third party.

15 W E E REGULATIONS

You will be responsible for disposing of the Goods at the end of their life at your own cost.

16 ORDER

Any order put in by you shall be firm and irrevocable as soon as the Company has received your order form.

17 FORCE MAJEURE

We will not have any liability under the Contract and may cancel or reduce the volume of Products to be delivered under it if we are prevented from or delayed in delivering or performing by any circumstances beyond our reasonable control including but not limited to industrial action, war, fire, prohibition or enactment of any kind, or failures or acts on the part of our suppliers or subcontractors or any other third parties (including your bank).

18 ASSIGNMENT

We may freely assign, sub-contract or otherwise transfer in whole or in part the Contract. You may not however do so without our written agreement.

19 GOVERNING LAW

19.1 The Contract is governed by the laws of Scotland and the Scottish courts shall have the non-exclusive jurisdiction to resolve any disputes arising out of or under it.

19.2 Notices required or permitted to be given under these conditions must be in writing (including without limitation by electronic mail) addressed to the relevant party at its registered office or principal place of business.

19.3 No waiver by us of any breach of the Contract by you is considered as a waiver of any subsequent breach of the same or any other provision. If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question is not affected.