



Supplementary Terms and Conditions for the Sale of Goods

Apex Computing shall sell Goods set out on the Order to the Customer on the terms and conditions set out in the General Terms and Conditions and these Supplementary Terms.

1. PRICES AND CHARGES

- 1.1 The Charges for Goods is set out in the Order and are subject to the provisions of clause 9 of the General Terms and Conditions and this clause 1.
- 1.2 Apex Computing shall at any time be entitled to change the Charges for Goods set out in the Order:
 - 1.2.1 Should the Customer alter its specification or instructions after the date of Order or Apex Computing otherwise has to alter, modify or otherwise carry out work on any Goods;
 - 1.2.2 Should there be any increase in the cost to Apex Computing of purchasing any Goods for any reason including foreign or currency fluctuations, alterations in any taxes or duties, variations in the cost of Apex Computing's materials, components, labour, transport and any other reason beyond the reasonable control of Apex Computing.
- 1.3 All prices quoted by Apex Computing are exclusive of Value Added Tax and other taxes, duties and other impositions and the Customer shall pay all taxes, duties and other governmental charges (where applicable) in respect of the Goods at the rate ruling at the tax point, together with any transport costs for delivery of the Goods to the Customer as set out on the Order.

2. PAYMENT

- 2.1 Notwithstanding the provisions of sub-clause 9.3 of the General Terms and Conditions, Apex Computing shall be entitled at its sole discretion, to request payment or part payment for Goods prior to the despatch of such Goods to the Customer.
- 2.2 If Apex Computing allows provisional credit or extends credit in respect of any part of the Goods, it shall be without prejudice to its right to refuse to give up possession of any other part of the Goods, save against payment.
- 2.3 Where the Goods are to be supplied or payment theretofore is to be made by instalments the failure of the Customer to pay any of the instalments in due time shall entitle Apex Computing to:
 - 2.3.1 Demand that all amounts for all outstanding instalments are immediately paid;
 - 2.3.2 Treat such failure as repudiation of the whole Agreement by the Customer and to recover any damages incurred as a result of such breach of this Agreement.
- 2.4 If the Customer is unable to accept delivery of the Goods on the agreed delivery date, Apex Computing shall be entitled to invoice the Customer as if such delivery had taken place.

3. WARRANTY

- 3.1 With respect to Goods that are manufactured by a third party and sold by Apex Computing:
 - 3.1.1 Apex Computing's only warranty to the Customer is that the Goods shall conform substantially to the description provided by Apex Computing and is free of any rightful claims of their manufacturer.
 - 3.1.2 To the extent that any warranties extended to Apex Computing by their manufacturer are transferable, Apex Computing shall transfer such warranties to the Customer.

- 3.1.3 Apex Computing cannot pass onto the Customer any greater warranty in respect of the Goods than that which has been conferred on Apex Computing under the terms of Apex Computing's agreement with its own supplier.
- 3.2 Apex Computing's only warranty in respect of Software provided under this Agreement shall be strictly limited to the medium of storage and Apex Computing shall not be liable in respect of any loss or damage occasioned to the Software itself or consequential upon the use of the Software for any purpose.
- 3.3 The warranty contained in sub clauses 3.1 and 3.2 are given in lieu of and shall be deemed to exclude all other implied warranties and conditions, except for the terms implied by section 12 of the Sale of Goods Act 1979, and whether arising by common law, statute or otherwise.
- 3.4 If the supplied Goods are Defective or become Defective during the period of any warranty extended to the Customer under the provisions of sub-clause 3.1.2 and the manufacturer agrees to accept a claim under its warranty provisions, the Customer shall promptly return the Goods to the location specified by Apex Computing for the purpose of repair under such warranty.

4. TECHNICAL INFORMATION

- 4.1 Apex Computing shall be under no liability whatsoever resulting from or arising out of or in connection with or in relation to any statement made by any of its employees, servants or agents or contained in any document in relation to this Agreement unless Apex Computing gives notice in writing to the Customer that it intends to rely on any such statement or document.
- 4.2 Without prejudice to the generality of sub-clause 4.1:
- 4.2.1 Any description contained in any catalogue, sample price lists or other advertising material supplied by Apex Computing is intended merely to present a general picture of the Goods sold by Apex Computing and shall not form a representation to the Customer or become part of any contract for sale of Goods made between Apex Computing and the Customer;
- 4.2.2 Apex Computing makes no warranty express or implied concerning any advice or recommendation made to it by the Customer.

5. DELIVERY

- 5.1 If Goods are to be delivered by Apex Computing to the Customer, such Goods shall be delivered to the location set out in the Order. Unless it is otherwise agreed in writing, such Goods shall be delivered by any means chosen by Apex Computing and Apex Computing shall not be under any obligation to provide personnel, plant or power to assist the unloading of the Goods.
- 5.2 If the Customer is unable to take delivery of the Goods, Apex Computing may at its sole discretion store the Goods at its risk, but may be entitled to charge the Customer its reasonable costs for doing so.
- 5.3 Apex Computing shall make reasonable endeavours to avoid delay, however Apex Computing will not accept any liability for any direct or indirect loss which may be caused by delayed delivery whether brought about by a cause beyond the control of Apex Computing or not.
- 5.4 Apex Computing shall be entitled to deliver the Goods in one or more consignments unless otherwise agreed.

The Customer shall inspect the Goods immediately on delivery thereof and shall within two Working Days from such delivery give Apex Computing notice of any claim that the Goods are Defective. If the Customer fails to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the Order; and

- 5.4.1 If the Customer establishes to Apex Computing's reasonable satisfaction that the Goods are not in accordance with the Order or are so Defective, Apex Computing may elect to repair the Goods or to replace the Goods or to refund the purchase price against the return of the Goods.

- 5.5 If the Goods are lost or damaged in transit the Customer shall notify both Apex Computing and the carrier of the loss or damage within two Working Days of the delivery (or anticipated delivery date, as may be the case).
- 5.6 Apex Computing shall not be responsible for the installation of Goods at the Customer's site under the terms of these Supplementary Terms, unless otherwise agreed in writing.

6. RETURNS

- 6.1 Goods supplied to the Customer under the terms of this Agreement which the Customer wishes to return for reasons other than those set out in sub-clause 3.4 cannot be returned without Apex Computing's prior written consent.
- 6.2 The Customer shall be responsible for delivering the Goods to Apex Computing's premises and the Customer shall be liable for all packaging and carriage costs.
- 6.3 All Goods returned to Apex Computing shall be returned in the same condition and packaging in which such was originally delivered to the Customer.
- 6.4 Apex Computing shall be entitled to charge the Customer a handling / re-stocking charge.

7. PASSING OF RISK

- 7.1 The Goods shall be at the Customer's risk from the time of delivery of the Goods to the Customer or a third party identified by the Customer and if the Customer returns Goods to Apex Computing, until the time of delivery back to Apex Computing.
- 7.2 Where Goods are to be collected by the Customer, or by the Customer's carrier the Goods shall be at the Customer's risk from the time of collection of the Goods.
- 7.3 Apex Computing shall not be liable for any loss of any kind to the Customer arising from any damage to the Goods occurring after the risk has passed to the Customer howsoever caused, nor shall any liability of the Customer to Apex Computing be diminished or extinguished by such loss.

8. RETENTION OF TITLE

- 8.1 The Goods agreed to be sold shall remain the property of Apex Computing until all sums due to Apex Computing have been paid in full.
- 8.2 Until such time as the Customer becomes the owner of the Goods, without prejudice to any of its other rights, Apex Computing may recover and resell the Goods supplied and its servants or agents may enter upon the Customer's premises for that purpose on the occurrence of any of the events contemplated in sub-clauses 11.1.1(a) or 11.1.2(a) to 11.1.2(f) of the General Terms and Conditions;
 - 8.2.1 Apex Computing has reasonable grounds to believe that the Customer is insolvent or that Apex Computing's right to receive payment or its interest in the Goods is or is likely to be in jeopardy.
- 8.3 Until title in the Goods has passed to the Customer hereunder the Customer shall not:
 - 8.3.1 Pledge the Goods or documents, or allow any credit to arise thereon; or
 - 8.3.2 Dispose of the Goods or documents or any interest therein; or
 - 8.3.3 Hold itself out as Apex Computing's agent in respect of the Goods.
- 8.4 Until such times as the Customer becomes the owner of the Goods supplied to it, the Customer will:
 - 8.4.1 Keep the Goods properly insured for not less than the price, gross of any applicable discount, which is set out on the Order.
 - 8.4.2 Store the Goods on its premises separately from its own goods in a manner which makes it readily identifiable as the Goods.

9. USE OF GOODS

- 9.1 The Customer shall bring to the attention of all persons using the Goods all of Apex Computing's instructions and recommendations for the use thereof.
- 9.2 The Customer shall not remove or deface any label affixed to the Goods referring any user thereof to Apex Computing's instructions and or recommendations for use.
- 9.3 If any item comprised in the Goods is resold by the Customer, the Customer shall bring to the attention of its purchaser all of Apex Computing's or the manufacturer's instructions and recommendations for use of the Goods.
- 9.4 On such resale as contemplated in sub-clause 8.3 the Customer shall exact an enforceable undertaking from its purchaser not to remove any label affixed to the Goods which refers any user thereof to Apex Computing's or the manufacturer's instructions and recommendations for use of the Goods and that such purchaser shall take such steps as are necessary to ensure that there will be available in connection with the use of the Goods adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health; and
 - 9.4.1 Subject to the provisions of sub-clause 10.13 of the General Terms and Conditions, the Customer shall indemnify Apex Computing against all third-party claims which arise in connection with the Customer's breach of the terms of sub-clauses 8.3 and 8.4.
- 9.5 The Customer shall be solely responsible for the disposal of the Goods and packaging; and
 - 9.5.1 Shall be solely responsible for its obligations under the Waste Electrical and Electronic Equipment Directive (2012/19/EU), the Packaging Waste Directive (94/62/EC) and Batteries Directive (2006/66/EC), as applicable.

10. CANCELLATION

- 10.1 No cancellation, alteration, amendment or postponement of delivery of all or part of its order by the Customer shall be effective unless communicated in writing to Apex Computing and agreed in writing by Apex Computing.
- 10.2 Upon any such cancellation Apex Computing shall be entitled to be paid the price of the Goods purchased by Apex Computing or supplied to the date of the cancellation and the Customer shall take over and pay for at the current price such materials as have been allocated by Apex Computing to the Order.

11. COMPUTER SOFTWARE

- 11.1 All Software shall be supplied to the Customer for use under the terms of the licence granted by the owner of the Software to the Customer and all intellectual property and title and the rights in the Software shall remain vested in any third party owning such property, title and rights.

12. EXCLUSION OF LIABILITY

- 12.1 Save as expressly set out in these Supplementary Terms the Goods are not supplied with or subject to any condition, warranty or other term whether express or implied unless specifically stated by Apex Computing in writing and except for the terms implied by of the Sale of Goods Act 1979.
- 12.2 In no circumstances except under clause 3 above shall Apex Computing's liability whether in contract or in respect of any negligence or otherwise to the Customer arising under or out of or in connection with any contract for the supply of Goods exceed the cost to the Customer in replacing or repairing the said Goods. Except in any case where a claim is made under section 12 of the Sale of Goods Act 1979, Apex Computing shall not be under any liability for any cost or expenses incurred by the Customer in repairing or replacing such Goods unless Apex Computing is first afforded a reasonable opportunity of repairing or replacing them provided that the Customer shall be entitled to effect such repairs or replacements before affording such an opportunity as may be reasonably necessary to prevent any consequential loss or damage to the Customer.

- 12.3 Subject to the provisions of sub-clause 10.13 of the General Terms and Conditions, the Customer shall indemnify Apex Computing and keep Apex Computing indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection herewith arising from the condition or use of the Goods in the event and to the extent of that damage, injury or loss shall have been occasioned partly or wholly by acts, omissions or negligence of the Customer, its servants or agents and any material breach by the Customer of its obligations to Apex Computing hereunder.

13. PATENTS, TRADEMARKS, ETC

- 13.1 The Goods are sold subject to the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; and the Customer will in this respect accept such title to the Goods as Apex Computing may have.

14. TERMINATION

- 14.1 If the Customer fails to take and pay for Goods sold in accordance with this Agreement Apex Computing shall be entitled to treat the Agreement as repudiated by the Customer. Without prejudice to Apex Computing's right to recover from the Customer by way of damages any loss or expense which Apex Computing may suffer or incur by reason of the Customer's default, Apex Computing shall be entitled to dispose of the Goods as it shall think fit and shall not be under any liability to account to the Customer for the price received therefore or otherwise.
- 14.2 Apex Computing shall be entitled immediately to terminate the Agreement at any time upon occurrence of any of the events contemplated in sub-clauses 11.1.1(a) or 11.1.2(a) to 11.1.2(f) of the General Terms and Conditions. Upon any such termination Apex Computing shall be entitled to be paid the price of Goods purchased by Apex Computing or supplied to the Customer prior to the date of termination.

15. FINANCE

If the Customer requests Apex Computing to arrange finance for the purchase of Goods on the Customer's behalf, the Customer agrees that:

- 15.1.1 Apex Computing will act as an agent for the Customer and for the avoidance of doubt, not for the finance provider;
- 15.1.2 If Apex Computing is unable to procure finance terms or is unable to procure finance terms that are acceptable to the Customer, this Agreement shall be terminated and any deposit made by the Customer shall be returned by Apex Computing and the Customer will have no further liability under the terms of this Agreement;
- 15.1.3 If the Customer fails to provide third-party indemnities that are required by the finance provider, such failure will be deemed to be a breach of this Agreement and the Agreement will be terminated forthwith and Apex Computing shall be entitled to retain any deposit made by the Customer;
- 15.1.4 It is a condition of this Agreement that regardless of any provisions made by the finance provider in its contracts, the Customer shall finalise the finance arrangement immediately upon Apex Computing's delivery of the Goods to the Customer's site;
- 15.1.5 If the Customer fails to finalise the finance agreement or fails to commence payment under the terms of the finance agreement, the Customer shall forthwith become liable for the full cost of the Goods supplied under the terms of this Agreement.