

# CONDITIONS OF SALE OF TRACKWISE DESIGNS PLC (the 'Seller')

## 1. Formation and interpretation

1.1 In these Conditions: **"Contract"** means a contract between Buyer and Seller for the sale of Products; **"Goods"** means all goods purchased under a Contract; **"IPR"** means all registered or unregistered rights to exploit intellectual property worldwide including patents, trade marks, registered designs, design rights and copyright, moral rights, rights in computer software, rights in databases, rights in information, trade secrets, inventions, know-how, trade names, domain names, goodwill, the right to bring an action for passing off and any rights of a similar nature or having equivalent effect; **"Order"** means any order howsoever issued in relation to Products; **"Products"** means Goods and/or Services; and **"Services"** means all services purchased under a Contract.

1.2 All Contracts, however formed, incorporate these Conditions to the exclusion of all other terms or conditions (other than any which cannot be excluded by law). No other terms and conditions are binding on Seller and Buyer waives any right to rely thereon. Seller's performance of a Contract is conditional upon Buyer accepting these Conditions as written without amendment. Seller's pre-contractual quotations are non-binding.

1.3 The construction, performance, validity and all aspects of each Contract are governed by English law and the parties accept the jurisdiction of the English courts.

## 2. Orders and specifications

2.1 Seller relies on Buyer to place an accurate Order. Buyer is solely responsible for ensuring that each specification in a Contract is accurate and adequate. Seller is not liable for (i) any omission in a Contract or (ii) loss arising from any imprecision in a Contract.

2.2 Provided that there is no material effect on the qualities of Products Seller reserves the right at any time to alter the specification for any Products to conform to applicable laws/ standards or otherwise.

2.3 Prototypes, samples or test work shall be at the cost of Buyer and Seller accepts no liability therefor. If Buyer approves any prototype, sample or test work, Seller has no liability for Products matching such prototype, sample and/or test work and Buyer cannot reject such Products.

## 3. Forecasting and delivery

3.1 At least 28 days before the start of each month Buyer shall send Seller an indicative forecast of its requirements for Products during that month.

3.2 Goods are delivered ex works the Seller's premises unless Seller agrees in writing to arrange carriage for the Goods. Time for delivery is not assured. Buyer has no right to damages or to cancel a Contract for late delivery nor shall Buyer make time for delivery of the essence of the Contract. Section 32(2) of the Sale of Goods Act 1979 does not apply and Seller is not bound to give notice under section 32(3) of that Act. Buyer shall have no right to rescind for late delivery unless the due date for delivery (as revised by Seller) has passed by more than 90 days.

3.3 Goods will comply with the corresponding specification in a Contract when delivered and for 90 days thereafter. Before using or interfering with the Goods, Seller must inspect the Goods. Goods are deemed accepted as soon as Buyer has had sufficient time to inspect them and in any event within 3 days following delivery. No compensation is due for shortage or defect unless a written complaint is received within 3 days of delivery, or within 5 working days of the despatch for non-delivery. After acceptance Goods cannot be rejected. After use of or interference with the Goods by Buyer or its customers, Buyer relinquishes absolutely all claims in relation to the Goods.

3.4 Buyer agrees to accept delivery in instalments. If Buyer declines to accept delivery, Buyer must pay for the Goods nevertheless and meet all of Seller's storage and/or disposal charges. Without any adjustment to the price and without liability to Buyer, Seller may deliver 10% plus or minus the quantity or weight of Goods ordered. Seller may charge for the containers and packaging or require that they are returned to Seller. Loading and unloading of Goods is the responsibility and cost of Buyer.

3.5 Services are performed with reasonable skill and care and are deemed accepted unless a written complaint is received within 5 days of performance.

## 4. Risk and title

4.1 Risk passes to Buyer and Buyer is responsible for damage, loss or deterioration of Goods when the Goods leave Seller's premises. Buyer must then insure the Goods for their replacement value.

4.2 Title (legal and equitable) to Goods passes to Buyer only upon Buyer paying in full all sums (including interest) due to Seller under all Contracts between Seller and Buyer. Seller may recover Goods in respect of which title has not passed at any time and Buyer irrevocably allows Seller and its agents to enter any premises, with or without vehicles, to recover such Goods. Until title has passed to Buyer the Goods must be kept by Buyer as fiduciary agent and bailee of Seller and must be stored separately from other goods clearly identifiable as belonging to Seller. Before title has passed Seller may claim the price of the Goods when due. If Buyer sells Goods prior to title passing, Buyer shall account to Seller for the resulting proceeds of sale.

4.3 Goods held as consignment stock shall be deemed delivered to Seller upon such Goods becoming obsolete or otherwise unusable. Goods manufactured and supplied on a call-off basis must be paid for whether or not a call-off instruction is issued by Buyer.

## 5. Price and payment

5.1 Applicable prices for Products are current as at date of delivery as may be stated in writing by Seller. Prices are exclusive of VAT and based on ex-works delivery of Goods. If Seller agrees to deliver Goods other than ex-works or perform Services off Seller's site Buyer shall pay all packaging, transportation, insurance and other costs incurred by Seller in relation thereto. Prices may be varied to take account of any increase in Seller's costs of supplying Products. Small Orders by volume may incur an additional charge.

5.2 Payment is to be made with Order where credit is not provided. Time is of the essence. Buyer shall pay in pounds sterling without set-off, deduction, counterclaim or other withholding. Payment is not deemed made until Seller has received cash or cleared funds in respect of the full amount outstanding. If Buyer fails to make payment with the Order Seller has no obligation to fulfil the Order.

5.3 If credit is provided payment is due and payable 30 days after date of invoice. Time for payment is of the essence. Buyer shall pay in pounds sterling without set-off, deduction, counterclaim or other withholding. Payment is not deemed made until Seller has received cash or cleared funds in respect of the full amount outstanding. If Buyer fails to make payment in full on the due date Seller may charge interest (both before and after judgment) daily on the amount unpaid at 5% above Bank of England's base rate from time to time together with Seller's reasonable costs of pursuing payment. Seller may raise a separate invoice in respect of each consignment delivered under a Contract. If Buyer's credit status changes, Seller may require payment with Order or other revised credit terms.

5.4 Seller shall have a lien over all property of Buyer which may be in Seller's possession in respect of all sums due from Buyer to Seller. If monies due to Seller are not paid within 14 days of the due date Seller may sell any property over which it has a lien and apply the sale proceeds to discharge any costs of sale, in repaying interest owed by Buyer to Seller, in payment of any principal sums owed to Seller and Seller shall account to Buyer for the remainder (if any).

## 6. Liability

6.1 All warranties, terms and conditions implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law but not otherwise. Liability for fraud, death or personal injury resulting from Seller's negligence is not excluded. Seller is not liable for indirect losses, loss of profits, damage to goodwill, damage to property, economic loss, consequential losses, special damages; business interruption, wasted expenditure, loss of business, loss of opportunity and/or production, removal of defective Goods or installation of substituted goods. Otherwise, Seller's liability is limited to: (i) the cost of repairing or replacing faulty Goods limited to an amount equal to the moneys received by Seller under the Contract in respect of those Goods; and (ii) the cost of reperforming any deficient Services. Seller is allowed the opportunity to remedy before Buyer can claim or remedy the matter itself.

6.2 Seller is not liable: (i) until Seller has received payment in full under the Contract; (ii) for any defect within reasonable commercial tolerances; (iii) if Buyer does not pass on to its customers and follow any information and warnings supplied with the Products; (iv) if Buyer does not store and use the Goods suitably; or (v) for circumstances beyond its control such as: governmental actions, war, emergency, civil disturbance, terrorism, Act of God, fire, explosion, flood, epidemic, accident; power failure, breakdown of machinery, import or export embargo; labour dispute; national shortage of materials, fuel, parts, machinery or labour; for Goods supplied in accordance with Buyer's specification or drawings; (vi) for any certificates passed on or issued by or on behalf of Seller in relation to the Products; or (vii) where Buyer has integrated the Products with the Buyers own goods.

6.3 Buyer indemnifies Seller for losses and damages which Seller incurs (including for legal actions in which Seller is involved), if any claim is made against Seller relating to any composite into which the Goods are incorporated or other products with which the Goods are used where the Goods supplied by Seller are either (i) not the defective part of any composite or other product, or (ii) are rendered the defective part or become defective by reason of acts or omissions of Buyer or a 3rd party, or (iii) are rendered the defective part or become defective by reason of instructions or warnings given by the supplier of the composite or other products.

6.4 Seller has no liability for: use of Products in conjunction with parts not pre-approved by Seller or if the Buyer undertakes any reconditioning or repair without Seller's approval; faulty installation, servicing or repair of Goods by any person other than a duly authorised representative of Seller; or Goods which have incurred in excess of 12,000 miles/19,200 kilometres of use.

6.5 Buyer shall indemnify Seller, its employees, agents and sub-contractors against loss or damage to any property or injury or death of any person caused by any

negligent act or omission or wilful misconduct of Buyer, its employees, agents or sub-contractors.

6.6 Prices for Products are based on the limitations and exclusions in these Conditions. Buyer is encouraged to take out insurance to cover losses for which liability is not the Seller's. Each limitation and exclusion herein applies to liability for breach of contract, liability in tort (including negligence), liability for breach of statutory duty; and liability for breach of common law.

## 7. Tooling and IPR

7.1 Tooling patterns and dies provided by Buyer remains the property of Buyer who shall insure, maintain and repair such tooling at its own cost. Seller may charge for storing Buyer's tooling. All other tooling is the exclusive property of Seller together with all IPR therein both during and after the Contract.

7.2 IPR in the Products and related drawings, specifications and data is not transferred to Buyer unless originally supplied by Buyer to Seller. Buyer cannot modify Goods or packaging, nor remove, or tamper with any trade marks used on or in relation to the Goods.

7.3 Buyer fully indemnifies Seller against all liability, losses, costs, claims, damages, and expenses suffered directly or indirectly by Seller arising out of any infringement or alleged infringement of the IPR of any third party in relation to Products supplied to the specification or instructions of Buyer.

## 8. Installation and testing

8.1 Testing may be undertaken by the Seller on the Sellers premises and is entitled to charge the Buyer for any testing.

8.2 Whilst not the Sellers standard practice If installation, testing or servicing of Goods is to be carried out by Seller at the Buyers premises, Buyer must make all preparations to the site as Seller deems necessary by the date specified by Seller and Buyer must provide full access to and use of the site and all facilities and suitable working conditions required by Seller for this purpose. Supplying, machining and/or testing of test pieces is at the cost of Buyer. Buyer will at all times provide a safe-working environment for Seller's employees, agents and sub-contractors and will comply with all relevant laws regulations and codes in connection therewith. Seller's liability in respect of any damage to property caused in installing, testing, servicing or repairing the Goods shall not exceed the price payable under the Contract in respect of those Goods.

8.3 Seller shall notify Buyer of the date on which it will carry out any tests requiring the presence of Buyer and Buyer undertakes that it will be present on the specified date for the purpose of witnessing the tests; failing which Seller may proceed with the tests and Buyer shall be bound by the results thereof.

8.4 Buyer shall pay 40% of the price to Seller prior to testing and installation.

8.5 Seller shall not be liable for errors or non-compliance of the Goods with any specification during the testing and installation period.

## 9. Termination

9.1 Seller can terminate or suspend a Contract by giving written notice if: (i) Buyer fails to pay money when due and payable; (ii) Buyer breaches the terms of the Contract or any other Contract; (iii) Buyer ceases or threatens to cease carrying on business; (iv) Buyer is declared or becomes insolvent or bankrupt, enters into receivership, administration, liquidation, administrative receivership or has a moratorium declared in respect of any of its indebtedness, or threatens to do any of the above; (v) in Seller's opinion Buyer is unable to fulfil its obligations under a Contract; (vi) any of the above is about to occur; or (vii) if Seller so decides for any other reason.

9.2 Termination of a Contract is without prejudice to rights and duties arising prior to termination and without prejudice to any other Contract in force.

9.3 If Buyer terminates a Contract without lawful cause, Buyer shall indemnify Seller for all liabilities and losses incurred by Seller including loss of profit.

## 10. General

10.1 Buyer represents that it is not a consumer, although nothing in these Conditions prejudice the statutory rights of any consumer.

10.2 By entering into a Contract, Buyer confirms the Contract contains the whole agreement between the parties and Buyer has not relied on any statement not expressly incorporated into the Contract provided that liability for fraud is not excluded. No statement made to Buyer is binding on Seller unless it is in writing and Seller confirms in writing that Buyer can rely on it. No variation is binding on Seller unless in writing signed by Seller.

10.3 No Contract is enforceable by any person other than Buyer and Seller. Buyer cannot assign its rights or sub-contract its obligations under a Contract. Seller may sub-contract in whole or part obligations under a Contract.

10.4 Unenforceable Conditions shall not affect the enforceability of the remainder of the Contract. Failure to enforce a provision is not a waiver of any rights under the Contract. Seller's remedies are cumulative not exclusive. Losses of Seller include losses incurred or suffered by its suppliers and by the Group in aggregate.

10.5 Buyer agrees to abide by Seller's policies and procedures as notified from time to time.

10.6 If bespoke terms and conditions are agreed, these Conditions remain binding on the parties to a Contract. Any discrepancy between these Conditions and any other agreed terms may only be construed against Seller if such other terms are in writing agreed by Seller.

#### 11. **Export**

11.1 For Products supplied outside of the UK (notwithstanding any other Condition): all import and export duties, taxes and charges must be paid by Buyer; at its cost Buyer must obtain import or export licences required for supply of Goods to the country of destination, prior to shipment; Buyer must comply with all regulations governing importation of Goods and arrange for Goods to be inspected and tested at Seller's premises prior to shipment. Seller has no liability for any claim for defective supply which is made after shipment or in relation to damage in transit.