



## 1. Definitions:-

Company means XMA Limited whose registered office address is at Wilford Industrial Estate, Ruddington Lane, Wilford, Nottingham, NG11 7EP; Conditions means these terms and conditions of business; Contract means the contract for the sale by the Company and purchase by the Customer of Goods; Credit Account Application/Renewal means the credit account application/renewal form completed by the Customer and the Company to which these terms and conditions are attached; Customer means the person firm or company who buys or agrees to buy the Goods from the Company; Data Controller has the meaning set out in the Data Protection Legislation; Data Processor has the meaning set out in the Data Protection Legislation; Data Protection Legislation means (i) the General Data Protection Regulation ((EU) 2016/679) ("GDPR") as amended or updated from time to time and the Data Protection Act 2018 and any successor legislation to the GDPR or the Data Protection Act 2018; Data Subject an individual who is the subject of Personal Data; Goods means all goods or services manufactured and supplied by the Company to the Customer pursuant to the Contract; Personal Data has the meaning given to it in the applicable Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Company is providing services under the Contract; Price means the price of the Goods plus VAT, plus Additional Charges and any other charges as referred to in Condition 8.5 and stated in the tender or quotation; Processing and Process have the meanings set out in the applicable Data Protection Legislation; Working Day means any day from Monday to Friday other than a Statutory holiday or public holiday in England; writing includes facsimile transmission and e-mail but excludes all other forms of electronic communication.

## 2. Basis of Contract

- 2.1 These Conditions shall apply to the sale by the Company of all Goods purchased by the Customer and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Customer.
- 2.2 No variation of these Conditions may be given by any of the Company's employees unless confirmed in writing by a Director and no collateral or supplemental contract may be made or construed unless confirmed in writing by a Director on the Company's official stationery.
- 2.3 Any tenders or quotations submitted to the Customer shall remain valid for the period stated therein, but if no period is specified such tenders and quotations shall be valid for the date of issue. All tenders and quotations shall be subject to these Conditions.
- 2.4 Any tenders or quotations will not constitute an offer and the Contract shall be made when the Company acknowledges the order placed by the Customer in writing or the Goods are delivered to the Customer whichever shall first occur.
- 2.5 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed save that nothing in this Condition excludes the Company's liability for fraudulent misrepresentation.

## 3. Cancellation

In the event that the Customer wishes to cancel an order, it may only do so with the written consent of the Company. With regards to a cancelled order, the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

## 4. Prices

- 4.1 For the avoidance of doubt, under these Conditions the Price does not include the cost of transportation or delivery to the Customer. A tender or quotation for the cost of delivery shall be provided by the Company prior to or at the time of order placement ("Delivery Price").
- 4.2 The Price and Delivery Price stated in any quotation or price list is based on conditions ruling at the date of first publication. If any increase howsoever arising in the Price or Delivery Price including but without being limited to any increase in the costs of manufacturing, raw materials, labour or transportation occurs after such date, the Company shall be entitled (subject to any statute or regulation) to make such addition to the Price or Delivery Price as shall be reasonable in the circumstances.
- 4.3 All prices quoted are exclusive of VAT which will be charged at the rate in force at the time of despatch.

## 5. Payment Terms

- 5.1 The payment terms in this Condition apply save to the extent that they are inconsistent with any specific payment terms agreed in writing between the Company and the Customer.
- 5.2 The Company shall be entitled to invoice the Customer for the Price and Delivery Price on or at any time after despatch of the Goods or any instalment thereof.
- 5.3 The Customer shall make payment for the Price and Delivery Price in sterling, unless specified in the Customer's Credit Account Application/Renewal or agreed otherwise in writing. Any payment received by the Company in any other currency will not be deemed to be payment for the Goods in question.
- 5.4 The Customer shall pay each invoice from the Company within 30 days of the invoice date.
- 5.5 In the event that the Customer fails to pay any invoice from the Company by the due date, all invoices issued to the Customer by the Company in respect of any Goods sold or supplied pursuant to any other contract shall immediately fall due for payment and any credit offered or extended by the Company to the Customer in respect of the same shall be cancelled forthwith.
- 5.6 The Company's invoices shall be payable in accordance with these Conditions, notwithstanding that delivery may not have taken place and the property in the Goods may not have passed to the Customer. The time of payment of the Company's invoices shall be of the essence of the Contract.
- 5.7 If the Customer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Company: -
  - 5.7.1 The Company shall be entitled to charge the Customer interest under the Late Payment of Commercial Debts (Interest) Act 1998;
  - 5.7.2 The Company shall be entitled to withhold delivery of any Goods agreed to be sold by the Company to the Customer or any instalment thereof (being the subject of the Contract or any other contract) until the overdue payment and any accrued interest is made in full;
  - 5.7.3 The Company shall be entitled to make a 2% charge for all payments made by credit card during the period in which any payment from the Customer to the Company is overdue.

## 6. Risk and Title of Goods

- 6.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery, or if the Customer wrongfully fails to take delivery, the time when the Company has tendered delivery of the Goods. If the nominated delivery point is a location other than the Customer's own premises, the Customer acknowledges that any person taking delivery at that address is imputed with authority to do so on behalf of the Customer.
- 6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the Price and Delivery Price of the Goods and all other Goods agreed to be sold by the Company to the Customer for which payment is then due.
- 6.3 Until such time as title in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.
- 6.4 Until such time as title in the Goods passes to the Customer if Goods are destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as trustee for the Company.
- 6.5 Until such time as the title in the Goods passes to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or said party where the Goods are stored and mark identify and repossess the Goods.
- 6.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

## 7. Export Licence Control

Many Goods sold by the Company are subject to export licence control. The Customer undertakes to ensure that they comply with all laws in force at the time when reselling the Goods, particularly the Export of Goods Control Order 1987.

## 8. Delivery

- 8.1 Goods shall be delivered to the Customer's nominated address by post or the Company's carrier.
- 8.2 Delivery dates are estimates only and time of delivery is not of the essence.
- 8.3 The Company shall have the right to deliver Goods ordered in instalments.



- 8.4 The Customer shall notify the Company of any shortfall of Goods delivered within 2 Working Days of delivery, or in the event of non-delivery, within 5 Working Days of the estimated delivery date. Notification must be by telephone followed by written confirmation.
- 8.5 If the Customer fails to take delivery of the Goods (otherwise than by reason of the Company's fault) or fails to give the Company adequate instructions for delivery then, without prejudice to any other right or remedy available to the Company, the Company may: -
- 8.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 8.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Price and Delivery Price under the Contract.
- 8.6 The Customer shall accept delivery of the Goods and shall promptly unload the Goods. For the avoidance of doubt, the Company or the Company's carrier shall not be responsible for unloading the Goods and the Customer shall be charged for wasted time at the Company's standard rate for wasted time and any other expenses incurred by the Company ("Additional Charges") for:-
- 8.6.1 wasted time for any delay in unloading; and/or
- 8.6.2 each repeat delivery where the Company or Company's carrier leaves the delivery point and subsequently returns to the delivery point with the Goods as a result of the Customer's inability or unwillingness to accept delivery and/or delay in unloading the Goods.

### 9. Return of Goods

- 9.1 If it is apparent on delivery that the Goods are defective or damaged the Customer shall notify the Company by telephone within 48 hours of receipt, and confirm in writing detailing the serial number, details of the defect and delivery date. Conditions 10.3 and 10.4 shall then apply.
- 9.2 In the event of a defect, which is not apparent on delivery, the Customer shall inform the Company of such defect immediately on discovery but in any event within 10 Working Days of delivery. Conditions 10.3 and 10.4 shall then apply.
- 9.3 Upon request from the Company the Customer shall return Goods which are defective if notification is given in accordance with Conditions 9.1 and 9.2 above.
- 9.4 Except where Condition 9.1 or 9.2 applies Goods can be returned only within 10 Working Days of delivery and with prior written consent from the Company.
- 9.5 All returned Goods, complete with all accessories, cables and manuals, must be returned in their original packaging.
- 9.6 The reasonable cost of carriage of returned Goods incurred by the Customer will be reimbursed by the Company if the Goods are found to be defective.

### 10. Warranties and Liability

- 10.1 Subject to the conditions set out below the Company warrants that upon delivery the Goods will correspond with their approximate description and will be free from defects provided that the Company shall be under no liability arising from failure by any person other than the Company to follow the Company's instructions (whether oral or in writing), inappropriate storage, improper use, or further treatment of or process to the Goods.
- 10.2 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. In particular, the Company makes no warranty as to the fitness of the Goods for any particular purpose even if that purpose is stated in the Customer's order. This exclusion includes recommendations or advice from the Company to the Customer relating to a specific enquiry. The Customer must satisfy itself as to the fitness for the purpose for which the Goods are intended.
- 10.3 In the event of any claim being made by the Customer, the Customer shall give the Company a reasonable opportunity to inspect the Goods in the same condition as they were at delivery after discovery of the defect and liability will not be accepted unless this procedure is followed.
- 10.4 Where any valid claim in respect of the Goods is made by the Customer the Company shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the Price and Delivery Price of the Goods (or a proportionate part of the Price and Delivery price), and subject to Condition 10.5 the Company shall have no further liability to the Customer.
- 10.5 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the negligence of the Company.
- 10.6 In the event that the Company is unable for any reason to fulfil any delivery of the Goods on any estimated delivery date the Company shall not be deemed to be in breach of contract or have any liability to the Customer. Failure by the Company to deliver any one or more of the instalments on any estimated delivery date or any claim by the Customer in respect of the Goods delivered in any one or more instalments shall not entitle the Customer either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Goods delivered in any other instalment.
- 10.7 Except as expressly provided in Conditions 10.4, 10.5 and 10.6 the Company's liability in connection with the sale of Goods shall be as follows:-
- 10.7.1 in respect of physical damage to or loss of the Client's tangible property to the extent that it results from the wilful default or negligence of the Company, its employees, agents or contractors, the Company's liability shall be limited to an amount of £5 million pounds sterling in respect of each incident or series of connected incidents;
- 10.7.2 in respect of all other direct loss (either in contract, tort or otherwise) the Company's total liability under this contract shall not exceed the lowest cost of replacing the Goods with the same or nearest comparable product at the time of the claim;
- 10.7.3 in respect of any loss of goodwill or for any type of consequential, special or indirect loss or damage, the Company's liability shall be nil.
- 10.8 The Company shall not be liable to the Customer nor be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control such as (but without limitation) any strike, lock-out or other form of industrial action, reduction in or unavailability of power at the Company's works or those of the Company's suppliers, breakdown of manufacturing or other equipment and unavailability of raw materials.
- 10.9 The Company shall have no liability under the provisions of these Conditions or otherwise if the Goods have not been paid for by the due date for payment in accordance with Condition 5.4.
- 10.10 Any claim by the Customer under this Condition 10 in respect of any Goods shall not entitle the Customer to withhold or delay payment in respect of any other Goods in respect of which no such claim has been made whether or not those Goods form part of the same consignment.

### 11. Insolvency of Customer

- 11.1 This Condition applies if: -
- 11.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.2 an encumbrance takes possession or a receiver is appointed, of any of the property or assets of the Customer; or
- 11.1.3 the Customer ceases, or threatens to cease, to carry on business; or
- 11.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.2 If this Condition applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract and suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for, all of the Company's outstanding invoices to the Customer become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### 12. Third Party Rights

A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

### 13. General

- 13.1 The Company shall not be liable for any failure to perform its obligations when such failure is due to any cause beyond its reasonable control.
- 13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at his registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.
- 13.4 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.
- 13.5 These terms and conditions of business supersede any other contractual obligations, specifically the Sale of Goods Act 1979

### 14. Data Protection

- 14.1 The parties acknowledge and agree that the performance of the Contract may involve the Company processing Personal Data of which the Customer is the Data Controller. The parties acknowledge and agree that, in respect of such processing, for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Company is the Data Processor.
- 14.2 The Customer warrants that:



- (i) it has all necessary and appropriate consents and notices in place to enable the lawful transfer of any Personal Data to the Company for the duration and purposes of any Contract;
- (ii) all instructions given by it to the Company in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and
- (iii) it has undertaken due diligence in relation to the Company's processing operations, and it is satisfied that the Company's processing operations are suitable for the purposes for which the Customer proposes to use the services and engage the Company to process the Protected Data.

14.3 The Company shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.

14.4 The Company shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

14.5 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

14.6 The Company warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

- (i) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
  - (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
  - (b) the nature of the data to be protected; and
- (ii) take reasonable steps to ensure compliance with those measures.

14.7 On the basis the Company warrants to adhere to the remainder of this condition 14.7, the Customer consents to the Company engaging sub-processors for carrying out any processing activities in respect of the Protected Data. Prior to appointing any such sub-processor, the Company warrants that:

- (i) prior to the relevant sub-processor carrying out any processing activities in respect of the Protected Data, the Company appoints each sub-processor under a written contract containing materially the same obligations as under this condition 14;
- (ii) the Company ensures each such sub-processor complies with all such obligations; and
- (iii) the Company to remain fully liable for all the acts and omissions of each sub-processor as if they were its own.

14.8 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, penalties, fines, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this condition 15.

14.9 The Customer acknowledges that the Company is reliant on the Customer for direction as to the extent to which the Company is entitled to use and process the Personal Data. Consequently, the Company will not be liable for any claim brought by a Data Subject arising from any action or omission by the Company, to the extent that such action or omission resulted directly from the Customer's instructions.

14.10 The Customer agrees that the Company may transfer Protected Data that is processed pursuant to the Company providing the goods and/or services in accordance with an Order to countries outside the European Economic Area (EEA) or to any International Organisation(s) (an **International Recipient**), provided all transfers by the Company of Protected Data to an International Recipient (and any onward transfer) shall (to the extent required under Data Protection Laws) be effected by way of appropriate safeguards and in accordance with Data Protection Laws.

14.11 The Company shall promptly (i) refer all data subject requests it receives to the Customer and (ii) notify the Customer of the Personal Data breach and provide any necessary details of the same.