

INFOTEC LTD - STANDARD TERMS & CONDITIONS OF SALE

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

“Seller” means Infotec Ltd, registered in England and Wales with Company Number 2703979.

“Buyer” means the person, company or firm who purchases the Goods from the Seller.

“Conditions” means the terms and conditions set out in this document as amended from time to time in accordance with clause 14.6.

“Contract” means the contract for sale and purchase of the Goods and/or services in accordance with these Conditions.

“Goods” means the goods (or any part of them) as set out in the Order Acknowledgement.

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade mark, trade names and domain names, rights in get up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals and extensions of, such rights and all similar equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

“Majeure Event” has the meaning given to it in clause 12.

“O&M Documentation” means the Operation and Maintenance Documentation issued by the Seller in connection with the Goods.

“Order” means the Buyer’s order for the Goods and/or services.

“Order Acknowledgement” means an order acknowledgement generated by the Seller accepting the Order for the Goods and/or services.

“Services” means the services to be provided (if any) by the Seller under this agreement as set out in the Order.

“Specification” means any specification for the Goods which may be included in the Order Acknowledgement.

“Sellers Pre-existing Materials” means any Intellectual Property Rights embodied in materials owned or generated by the Seller prior to the commencement of the Contract.

“Warranty Period” means a warranty to be provided for a period of time as agreed between the Buyer and Seller and set out in the Order Acknowledgement or the Warranty document issued by the Seller.

“Works” means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software and all other materials in whatever form including, but not limited to hard copy and electronic form prepared or generated by the Seller either prior to or during the Contract.

1.2 Construction. In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as

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amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and e-mails.

2. Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Seller issues an Order Acknowledgement, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3. Orders and Goods

3.1 The Goods are described in the Order Acknowledgement.

3.2 The Seller reserves the right to make any changes to the Specification of the Goods which are required to conform with any applicable statutory or regulatory requirements (including EU requirements), or, where the Goods are to be supplied to the Seller's Specification, which do not materially affect their quality or performance.

3.3 No Order which has been accepted by the Seller may be cancelled or scheduled for delivery by the Buyer except with the agreement in writing of the Seller strictly on the basis that the Buyer shall indemnify the Seller in full against all liabilities, costs, expenses, damages and losses (including direct or indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other

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reasonable professional costs and expenses) incurred by the Seller as a result of the cancellation or the re-scheduling of delivery.

4. Quality

4.1 The Seller warrants that on delivery the Goods shall:

- (a) conform in all material respects with the Specification;
- (b) be free from material defects in design, material and workmanship (unless the Seller is reliant on the Buyers design in which case no such Warranty is given); and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

4.2 The Seller and Buyer will agree the purpose for which the Goods can be used (the Purpose).

4.3 Subject to clause 4.4, if:

- (a) the Buyer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- (b) the Seller is given a reasonable opportunity of examining such Goods; and
- (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,

the Seller shall, at its option, repair or replace the defective Goods.

4.4 In order to invoke the terms of clause 4.3 above the Buyer must provide the serial number or numbers for the Goods.

4.5 Any obligation of the Seller to repair and/or replace the Goods as set out in clause 4.3 above shall be no more extensive than that which any manufacturer of the whole or part of the Goods has to the Seller.

4.6 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 4.3;
- (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
- (d) the Buyer alters or repairs such Goods without the written consent of the Seller;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description or the Specification as a result of changes made to ensure

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- they comply with applicable statutory or regulatory requirements;
- (g) failure to comply with the O&M Documentation;
 - (h) normal wear and tear (including fading light output);
 - (i) use otherwise in accordance with the Seller's instructions;
 - (j) Wilful damage or neglect;
 - (k) exposure to corrosive materials;
 - (l) a defect arising from pixel count attrition.

4.7 Except as provided in this clause 4, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

4.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller

5. Sellers Obligations

5.1 The Seller shall supply the services with reasonable care and skill in accordance with section 12 of the Supply of Goods and Services Act 1982.

6. Buyers Obligations

6.1 The Buyer shall:

- (a) co-operate with the Seller in all matters relating to the provisions of Goods and Services;
- (b) provide, for the Seller, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Buyer's premises, office accommodation, data and other facilities as reasonably required by the Seller;
- (c) inform the Seller of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Buyer's Premises;
- (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Goods and/or the Services;
- (e) operate the Goods in accordance with the Seller's O&M Documentation;
- (f) use or operate the Goods for the Purpose.

7. Delivery

7.1 Any dates stated for delivery are approximate only and the time of delivery shall not be of the essence. The Seller shall not be liable for any delay in deliver of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.

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7.2 The Seller shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree (**Delivery Location**) at any time after the Seller notifies the Buyer that the Goods are ready.

7.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

7.4 The Seller will not be liable for any direct, indirect or consequential loss costs, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence) nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delays exceeds 180 days.

7.5 If the Buyer fails to accept delivery of the Goods within 5 business days of the Seller notifying the Buyer that the Goods are ready for delivery, or the Seller is unable to deliver the Goods because the Buyer has not provided the appropriate instructions, documents, licenses, consents, or authorisations, the Seller may resell or otherwise dispose of part or all of the Goods (and after deducting reasonable storage and selling costs) account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

7.6 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

7.7 The Seller reserves the right to request monies on account of an Order and invoice accordingly. In the event that such an invoice is raised it shall be payable within 14 days from the date of invoice and the Seller shall not be obliged to commence any work until such time as the monies due as per the invoice have been paid in full.

7.8 The quantity and content of any shipment of Goods as recorded by the Seller upon dispatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer, unless the Buyer can provide conclusive evidence to the contrary.

7.9 Delivery is the responsibility of the Buyer and the Seller arranges delivery solely as the Buyer's agent. The Seller accepts no responsibility for any loss or damage during transit or non-delivery. Any damage must be notified in writing to the Seller and if applicable the courier within 48 hours of when the Goods would in the ordinary course of events been received.

7.10 The Buyer shall provide at its expense at the Delivery Location all adequate and appropriate resources, equipment and labour for unloading the Goods.

8. Price and Payment

8.1 The price of the Goods and/or Services shall be the price set out in the Order Acknowledgement (save as set out at clause 8.2 below).

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8.2 The Seller may, by giving notice to the Buyer at any time before Delivery, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:

- (a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions;
- (d) an improvement or an enhancement of the performance of the Goods.

8.3 Unless otherwise agreed the price of the Goods is exclusive of any or all taxes, charges, levies, insurance, assessments, transportation costs and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, exportation, sale, lease or other distribution of the Goods.

8.4 The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 The Seller may invoice the Buyer for the Goods and/or Services on or at any time after the completion of the Goods and/or Services.

8.6 The Buyer shall pay the invoice in full and in cleared funds within 30 days from the date of the invoice unless the Seller has raised an invoice on account in accordance with the provisions of clause 7.7. Payment shall be made into the bank account nominated in writing by the Seller. Time for payment is of the essence.

8.7 The Seller reserves the right to suspend deliveries where payments not received in accordance with these terms and conditions of sale.

8.8 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

8.9 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment and Without prejudice to other rights or remedies the Seller may have, the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above NatWest Bank Plc base rate, from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. For the avoidance of doubt, the Buyer shall pay the interest together with the overdue amount.

9. Title and Risk

9.1 The risk in the Goods shall pass from the Seller to the Buyer upon Delivery.

9.2 Title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the Goods.

9.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

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- (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Seller immediately if it becomes subject to any of the events listed in clause 10.2; and
- (e) give the Seller such information relating to the Goods as the Seller may require from time to time.

9.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 10.2, then, without limiting any other right or remedy the Seller may have:

- (a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Seller may at any time:
 - (i) require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

10. Termination and Suspension

10.1 If the Buyer becomes subject to any of the events listed in clause 10.2, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer.

10.2 For the purposes of clause 10.1, the relevant events are:

- (a) the Buyer is in material breach of some or all of its obligations under the Contract;
- (b) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer];
- (d) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a

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scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

- (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
- (f) (being a company) the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- (h) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- (i) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2(b) to clause 10.2(g) (inclusive);
- (k) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (l) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (m) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.3 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 10.2(b) to clause 10.2(m), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

10.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

10.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

10.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. Limitation of Liability

11.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or

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subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(d) defective products under the Consumer Protection Act 1987.

11.2 Subject to clause 11.1:

(a) the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods and/or the Services.

12. Force Majeure

12.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sellers or subcontractors.

13. Intellectual Property Rights

13.1 All Intellectual Property Rights in the Works and the Seller's Pre-Existing Materials remain vested in the Seller and the Buyer will not acquire any proprietary right, title or interest in any such Intellectual Property Rights.

13.2 Unless expressly agreed in writing between the Buyer and the Seller, all Intellectual Property Rights developed or created during the course of the Contract shall be the property of the Seller and the Buyer will not require any proprietary right, title or interest in any such Intellectual Property Rights. Further, for the avoidance of doubt, the Buyer hereby assigns absolutely to the Seller all title interest it may have in any such Intellectual Property Right and hereby waives any moral rights it may acquire now or in the future.

13.3 In the event that the Seller provides the Buyer with a particular product which the Buyer has specifically requested the Seller to acquire from a third party or, a third party product is incorporated into Goods supplied by the Seller, then the Seller shall not be liable to the Buyer and the Buyer shall hold the Seller harmless from all claims and all direct, indirect or consequential liabilities or losses (including loss of profits, loss of business, depletion of good will and similar losses), costs, proceedings, damages and expenses (including legal and all other professional fees and expenses) awarded against or incurred or paid

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by the Buyer as a result of the incorporation of any third party product whensoever and howsoever arising.

14. General

14.1 Any notice required or permitted by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business. Any such notice shall be deemed to have been received on the second business day after posting.

14.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.3 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.

14.7 Assignment and other dealings.

(a) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

14.8 **Governing Law.** The Contract is governed by and construed in accordance with the laws of England and Wales.

14.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims)

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