

CONDITIONS OF SALE

In these Conditions of Sale "The Company" shall mean Nomis Connections Limited; "the Customer" shall mean the Customer whose name appears on the quotation form or order form of which these Conditions form a part. "the Goods" mean all or any part of the equipment, apparatus, materials and articles supplied by the Company. "Software" means computer programs of the Company together with related materials for use therewith including (but not limited to) flowcharts, source codes, and logic diagrams directly or indirectly incorporated in or otherwise delivered in conjunction with the Goods; "the Contract" means any contract between the Company and the Customer for the manufacture and/or sale and purchase of Goods.

1. APPLICATION

These Conditions apply to all Sales of Goods by the Company to the Customer and shall apply in place of and prevail over any forms or conditions contained or referred to in the Customer's order or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless the Company otherwise expressly agrees in writing and any purported provisions to the contrary are hereby excluded or extinguished.

2. QUOTATION, ORDER AND CONTRACT

Quotations issued by the Company shall unless otherwise expressly stated remain valid for 30 days after the date thereof. Quotations issued by the Company are not offers capable of acceptance so as to make a binding contract. All orders placed by the Customer with the Company require written acceptance by the Company and upon such written acceptance a valid and binding contract shall thereupon exist between the Customer and the Company. No variation to the terms of any such contract (hereinafter referred to as "the Contract") shall be valid unless it be made in writing and signed on behalf of both the Company and the Customer by their respective duly authorised representatives.

3. DELIVERY

- (a) Delivery dates mentioned in any quotation, acknowledgement of order or elsewhere are approximate only and not of any contractual effect and the Company shall not be under any liability to the Customer in respect of any failure, howsoever caused, to deliver the Goods or to render any services in relation thereto on a particular date or dates nor shall any such failure entitle the Customer either to refuse to accept delivery of the Goods or terminate the Contract.
- (b) Unless otherwise agreed in writing, delivery shall be deemed to have been duly effected by the Company by delivery of the Goods from its works to a carrier for transportation to the Customer's premises indicated on any order.
- (c) If the customer refuses or fails to take delivery of the Goods tendered in accordance with the Contract the Company shall be entitled to store at the risk of the Customer any Goods of which the Customer refuses or fails to take delivery within 7 days after the date notified to the Customer by the Company and the Customer shall, in addition to the purchase price, pay all costs of such storage and any additional costs incurred as a result of such refusal or failure. If within a period of a further 28 days the Customer has not taken delivery of the Goods so notified then the Customer shall be in breach of the Contract for the purpose of Clause 14 hereof and the Company shall, without prejudice to any other, be entitled to dispose of the Goods in such a manner as the Company may determine.

4. PRICES

Unless otherwise agreed in writing, prices are ex works excluding VAT. Packing and carriage are charged extra where applicable. The Company reserves the right to vary any quoted price (either by varying the invoiced price and/or by rendering a supplementary invoice or invoices) in order:-

- (a) to take account of increases in cost between the date of quotation and delivery resulting from:
- any modified specifications in relation to the goods considered necessary by the Company subject to the approval of the Customer such approval not to be unreasonably withheld;
 - any increase in the rates of wages payable to labour or in the cost of materials or (where applicable) transport, or of conforming to such laws, orders, regulations and bye-laws as are or may become applicable to the Contract.
- (b) to take account of any variation between the date of quotation and the date of the Company receiving immediately available funds from the Customer's remittances in the rate at which the Company is able to purchase for sterling in the official London inter Bank Foreign Exchange Market for immediate delivery the currency of the country from which the Company obtains the Goods.

5. TAXES

Any tax or duty (however described) now or at anytime payable in relation to the carrying out of the Contract (other than any tax measured by the income of the Company) shall be for the account of the Customer and recoverable by the Company from the Customer accordingly.

6. PAYMENT

- (a) Unless otherwise agreed payments shall be made without any deduction of set-off so as to be received by the Company not later than twenty-eight days following despatch of the Goods or notification by the Company to the Customer that the Goods are available "ex works" whichever first occurs. If any payment under this clause is not received by the Company within thirty days of the due date then the Customer shall pay interest thereon at the rate of two percent per month until receipt by the Company of the full amount thereof whether or not after judgement (and any other costs incurred in relation to the recovery of any sums outstanding shall be for the Customer's account.)
- (b) Stipulations as to the time of payment are to be deemed to be of the essence of the contract.

7. SPECIFICATIONS AND DRAWINGS

- (a) Except to the extent expressly stipulated in writing by the Company, programs, systems reference and systems design manuals, associated documentation, together with all drawings, illustrations, specifications, descriptions and other information submitted by the Company to the Customer are approximate and are intended only to present a general description of the Goods.
- (b) The Company reserves the right to make such change in design, manufacture or specification of the Goods and/or Software as will, in its opinion, constitute an improvement and to use alternative materials or components which in its opinion, are not inferior to those comprising the Goods as described on the order.

8. INSTALLATION

In cases where installation and/or testing of Goods on the Customer's premises is included in the Company's quoted price then the Customer shall grant free access to its premises during normal working hours for the purposes of the Company's employees rendering such services as may be agreed or necessary in relation to such installation and/or testing. In the event that at the request of the Customer employees of the Company work outside normal hours in relation to such installation and/or testing then the Customer shall pay such additional rates as may from time to time be stipulated by the Company. In the event that any special equipment is required in relation to the work contemplated in this Clause, the cost of providing such equipment shall be borne by the Customer.

9. RISK AND PROPERTY

- (a) The risk in the Goods shall pass from the Company to the Customer at the time when the Customer takes or should have taken delivery thereof (whichever is the sooner) in accordance with the provisions of Clause 3 hereof.
- (b) Until such time as the price of the Goods has been paid to the Company in full, title to the Goods will remain vested in the Company and the Customer shall have possession of the Goods as bailee for the Company and shall store the Goods in such a way as to enable them to be identified as the property of the Company provided that if the Customer is purchasing the Goods for resale the Customer may as trustee for the Company sell and deliver the Goods to a third party in the ordinary course of the Customer's business on condition that until such payment as aforesaid the Customer shall hold all proceeds of such sales in trust for the Company and in a separate account. The Customer hereby agrees forthwith on receipt of written notice from the Company so requesting to assign to the Company all rights and claims which the Customer may have against its customers arising from such sales until payment is made in full as aforesaid.
- (c) The Company may without notice or liability, and without prejudice to any other legal remedy repossess any Goods in respect of which payment is overdue and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of the Customer's premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and without prejudice to any accrued rights of the Company thereunder or otherwise.

10. INCOTERMS 1990

Incoterms (1990) as revised from time to time shall apply except where inconsistent with any of the provisions contained in these Conditions.

11. GUARANTEE AND LIMITATION OF LIABILITY

- (a) If, within 12 months from the date of the notification referred in Clause 3 hereof, the Customer shall give written notice to the Company that any defect exists in the Goods and shall return the defective part or parts of the Goods including accessories and original packaging carriage paid to the Company's works and if the Company is satisfied that any such defect arose solely from faulty materials or workmanship of the Company then the Company shall make good such defect of defects without charge to the Customer and the repaired or replaced part will be delivered to the Customer in the manner provided for by Clause 3 hereof.
- (b) The Company shall be under no liability under this Clause:-
- if any modification or repairs to the Goods are carried out by the Customer or by any third party without the Company's prior written consent; or
 - in respect of Goods not manufactured by the Company, provided that in such cases the Company shall, insofar as it is possible for it to do so, grant to the Customer the benefit of any guarantee given to the Company in respect of such Goods; or
 - if any defect is caused by incorrect or negligent handling, disregard of operating instructions, abnormal use, overloading, unsuitable work, faulty installation or any other default by the Customer, its servants or agents; or
 - in respect of Goods or parts thereof which have been used by the Customer prior to the date of the contract.

- (c) Subject to the foregoing, all conditions, warranties and representations expressed or implied by statute, law or otherwise in relation to the Goods are hereby excluded and the company shall be under no liability to the Customer for any loss, damage or injury direct or indirect resulting from defective materials, faulty workmanship or otherwise unless (subject to paragraph (d) below) such loss is shown to be caused solely by the negligence of the Company but in no circumstances whatsoever will the Company be responsible for any loss of business, profit or any other consequential, indirect or special loss howsoever arising.
- (d) With the exception of liability for death or personal injury caused by the negligence of the Company the Company's total liability to the Customer, howsoever arising, shall in no circumstances whatsoever exceed £2,000,000 in respect of any occurrence or series of occurrences.

12. PATENTS AND TRADEMARKS

The Company gives no warranty or guarantee that the use or sale of the Goods does not infringe the rights of any third party, in any case where the Goods are or are capable of becoming the subject of any industrial or intellectual property rights the Company warrants that it shall transfer to the Customer only such title as it may have to the Goods. The Customer shall indemnify the Company against any and all liabilities, claims and costs incurred by or made against the Company as a direct or indirect result of the carrying out by the Company of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any rights of a third party.

13. FORCE MAJEURE

The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of the Goods by the Company being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Company's reasonable control including, but not limited to, act of God, war, strike, lock out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, material or transport, or other circumstances affecting the supply of the Goods or of raw materials therefore by means or the delivery of the Goods by the Company's normal means or the delivery of the Goods by the Company's normal route or means of delivery.

14. INTELLECTUAL PROPERTY RIGHTS

- (a) The Company will, at all times, retain the property and copyright and rights in the nature of copyright in all software, designs, drawings or technical descriptions supplied by it in connection with the Quotation or otherwise in connection with the contract.
- (b) The Customer shall and shall ensure also that its employees shall keep confidential and shall not without the Company's prior written permission disclose to any third party any of the Software, drawings, designs or information whether of a technical nature or commercial nature acquired from the Company directly or indirectly pursuant to the Quotation or the Contract and shall use the same only for the purpose of the Contract and the operation of the Goods.
- (c) The Customer will not, without the prior written consent of the Company, copy or enable any other persons to copy the Goods or any part thereof.
- (d) The Company will be free to use any material including plans drawings etc, supplied to it by the Customer in connection with the quotation.
- (e) Notwithstanding any implication to the contrary appearing elsewhere in these Conditions and to avoid any doubt the Software and the copyright and rights in the nature of copyright or other intellectual property rights of whatever nature in the Software are and shall remain at all times the property of the Company and are designated as confidential and shall be used only in conjunction with the Goods.
- (f) In the event that the Company exercises its rights under Clause 14 of these Conditions the Customer will return promptly to the Company all property designated under the Contract as confidential and belonging to the Company.

15. DEFAULT BY CUSTOMER

If the Customer shall fail to observe and perform any of these Conditions of Sale or any other term of the Contract, or shall compound with its Creditors generally, or shall have a Receiver appointed for all or any part of its assets, or shall take or suffer any similar action in consequence of debt, or shall become unable to pay its debts as they fall due, or shall permit, or suffer any distress or execution to be levied or threatened upon any of its assets, or if any judgement against the Customer shall remain unsatisfied for more than 14 days, or if proceedings shall be commenced by any authorised body for liquidation of the Customer otherwise than for the purpose of amalgamation or reconstruction then the Company shall have the right forthwith, without prejudice to any of its other rights to treat the Contract as having been repudiated by the Customer and to claim all loss or damage resulting from such repudiation.

16. CREDIT REFERENCES AND DATA PROTECTION

The Company may at any time before delivery of the Goods require the Customer to provide the Company a maximum of two credit references from such persons or persons and at such time or times and in such manner as the Company shall reasonably require and, in the event that such references are not provided or are not deemed satisfactory by the Company, the Company shall be entitled to request payment in full for the Goods 7 days before delivery or treat the Contract as if it had never been entered into and the Company and the Customer shall have no rights or liabilities thereunder. The Company may make a search with a credit reference agency, which will keep a record of that search and may share that information with other businesses. We may also make enquiries about the principal directors of a company with a credit reference agency. **TITLE TO THE EQUIPMENT IS NOT TRANSFERRED TO THE BUYER UNTIL PAYMENT HAS BEEN RECEIVED IN FULL.**

17. WAIVER

Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of such right nor to operate as a bar to the enforcement thereof at any time or times thereunder.

18. CUSTOMER RESPONSIBILITIES

It is the responsibility of the Customer to obtain any licence or consent of any Government or other authority, which might be required for the acquisition, or use of the Goods by the buyer.

19. NOTICES

Any notice required or authorised to be given hereunder may be given either personally or by post addressed to such other party at its address furnished to the other by written notice and shall be deemed to have been served 48 hours after the same is posted and proof that the envelope containing the notice was properly addressed and sent prepaid post shall be sufficient evidence of service.

20. LAW

English law shall govern the construction, validity and performance of the Contract and the Company and the Customer hereby agree to submit to the jurisdiction of the English Courts.