

Autopa Limited Terms and Conditions of Sale

1. Definitions

- 1.1 In these Conditions these words have the following meanings:-
“**Consumer**” any natural person who is acting for purposes which are outside his/her business;
“**Contract**” any contract incorporating these Conditions under which we sell Goods and/or provide Services to you;
“**Goods**” the whole or any part of the goods which we agree to supply to you;
“**Liability**” the liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including legal costs on a full indemnity basis and administration costs) and any other losses and/or liabilities;
“**Services**” the whole or any part of the services we agree to provide to you;
“**Working Day**” any day which is not a Saturday, Sunday or statutory public holiday;
“**we**”, “**us**” and “**our**” Autopa Limited; and
“**you**”, “**your**” and “**yourself**” the customer.
Any reference to any provision of a statute includes a reference to that provision as amended, re-enacted or extended at the relevant time.

2. Contract Terms, Variations and Representatives

- 2.1 The Contract will be governed by these Conditions to the exclusion of any other terms and conditions. These Conditions will override any terms or conditions stipulated or referred to by you in your order or pre-contract negotiations.
- 2.2 Our employees, sub-contractors and/or agents have no authority to agree any term or make any representation or warranty concerning the Goods and/or Services or to enter into any contract except on the basis of these Conditions.
- 2.3 Unless otherwise agreed in writing by us no oral warranties, representations or variations to these Conditions shall bind us. The words “unless otherwise agreed in writing by us” in these Conditions means unless otherwise agreed in writing and signed by one of our Directors or Commercial Managers or Deputy Commercial Managers.
- 2.4 Any illustrations, descriptions or specifications in our catalogues, price lists or other advertising material are intended merely to present a general approximation of the Goods and/or Services and will not form a representation or be part of the Contract unless otherwise agreed in writing by us.
- 2.5 Even if it is not expressly stated, any Order placed by you and our acceptance shall still be subject to these Conditions.
- 2.6 We may correct any clerical or typographical errors made by our employees at any time.

3. Orders and Contract

- 3.1 Any quotation we give to you for the Goods and/or Services is not binding and we may alter or withdraw any quotation at any time for any reason.
- 3.2 We reserve the right to refuse to accept your order.
- 3.3 The Contract between you and us will become legally binding when we have notified you in writing of our acceptance of your order.

4. Your Right to Cancel this Agreement

- 4.1 If you are a Consumer and you only means of communication with us has been exclusively a means of distance communication (such as telephone, mail order, catalogue, facsimile or electronic mail) you may cancel the Contract only if you have notified us in writing before the end of 7 Working Days from either the date you receive our acceptance of your order if you have ordered Services, or from the date you receive the Goods you have ordered.
- 4.2 If you have received the Goods before you cancel the Contract then you must send the Goods back to us at your own cost and risk. If you cancelled the Contract but we have already processed the Goods for delivery, you must not unpack the Goods when they are received by you and you must send the Goods back to us at your own cost and risk as soon as possible.
- 4.3 You cannot cancel this Contract if you have ordered Goods which are being made to your specification or if the Services have started to be performed with your agreement.
- 4.4 Once you have notified us that you are cancelling the Contract, any sum already paid to us will be returned to you as soon as possible and in any event within 30 days of your order, provided that the Goods in question are returned by you and received by us in the condition they were in when delivered to you. If you do not return the Goods delivered to you or do not pay the costs of delivery, we shall be entitled to deduct the direct costs of recovering the Goods from the amount to be credited to you.

5. Specification, Instructions and Information

- 5.1 The quantity, quality, description and/or specification for the Goods and/or the Services shall be as set out in our quotation (if agreed by you) or your order (if agreed by us) unless otherwise agreed in writing by the parties.
- 5.2 You are responsible for checking the quotation and/or order and for making sure that you are satisfied that the Goods and/or Services are sufficient and suitable for the purposes for which they have been ordered. You must inform us of any special requirement which you consider necessary that the Goods and/or Services should comply with before we accept your order or we provide a quotation.
- 5.3 Any specification supplied by us to you, or specifically produced by us for you, all inventions, patents, copyright, design rights (whether registered or unregistered), trade marks (whether registered or unregistered) and/or know-how and/or any other intellectual property rights in the specification, in the Goods and/or arising as a result of our performing the Services and the right to apply for such rights shall be owned exclusively by us absolutely.
- 5.4 You shall not disclose to any third party or use any such specification referred to in Clause 5.3 except to the extent that it is or becomes public knowledge through no fault of yours, or as required for the purpose of the Contract.
- 5.5 You agree that, at your cost, you will do all acts and/or execute all documents and/or deeds which are necessary or desirable to give effect to Clause 5.3.
- 5.6 You shall not make any modification to the Goods or their packaging, nor alter, remove, or tamper with any trade marks used on or in relation to the Goods and/or Services.
- 5.7 We grant to you a non-exclusive royalty-free perpetual non-transferable licence to use for the purposes contemplated by this Contract all intellectual property rights owned by us which arise solely from the supply of the Goods and/or performance of the Services.
- 5.8 We shall be free to utilise for the benefit of our other customers any skill and/or know-how that we may develop or acquire in the supply of the Goods and/or performance of the Services.

- 5.9 We shall have no Liability for errors in any specification or details supplied by you or any third party on your behalf and you are solely responsible for the suitability and accuracy of such specification and details.

- 5.10 You will indemnify us for any Liability which occurs as a result of our use of specifications, details and/or drawings supplied by you or any third party on your behalf.
- 5.11 We reserve the right to make any changes to the specification for the Goods and/or Services if we are required to by law or in order to comply with applicable safety requirements or manufacturing requirements provided that such changes do not have a material adverse effect on the quality and/or performance of the Goods and/or Services.
- 5.12 You agree to follow any reasonable instructions that we may give you about the use and safe handling of the Goods and you agree that you will also pass such instructions on to all third parties to whom you may supply or who may use the Goods.

6. Prices

- 6.1 The charges for the Goods and/or Services are set out in our price list which may be updated from time to time. A copy of our current price list is available on request.
- 6.2 All prices quoted are exclusive of any applicable value added tax, duties or other government charges payable in respect of the Goods and/or Services for which you shall bear any additional cost.
- 6.3 Unless otherwise agreed by both you and us, you bear the costs of any transport, packaging and insurance which shall be in addition to the charges stated in our price list. If you ask us to make a delivery using a specific carrier you agree to bear the cost of any difference in cost between our normal method of carriage and the specific carrier you have requested.

7. Exceptional Charges

- 7.1 We may charge additional charges to those set out in our price list if you order:
- 7.1.1 Goods and/or Services to be delivered and/or performed outside mainland United Kingdom;
- 7.1.2 bulky, awkward, extra long or extra wide Goods; and/or
- 7.1.3 a small quantity of Goods depending on the type of material required.
- 7.1.4 Details of what we consider bulky, awkward, extra long, extra wide and small quantities of Goods to which this Clause 7.1 applies are available on request.

8. Delivery or Completion of Services

- 8.1 If your place of business is not within the United Kingdom the Goods will be sold to you on an ex-works basis within the meaning given to that term in the ICC Incoterms 2000 (“Incoterms”) as revised from time to time which shall be incorporated into the Contract. If there is any inconsistency between Incoterms and any express term of the Contract the latter will prevail. We will be under no obligation to give you the notice specified in Section 32 (3) of the Sale of Goods Act 1979.
- 8.2 Any dates that we give you for delivery and/or performance are estimates only and are also conditional upon us promptly receiving from you final instructions for delivery and/or performance. Time is not of the essence in relation to such dates and we will not be responsible for any failure to deliver or complete by such dates.
- 8.3 You shall be responsible (at your own cost) for all arrangements to unload the Goods when delivered to you. Delivery will be made between 9.00 am and 5.00 pm on Working Days and during such hours you will make sure we are able to access the address for delivery in order to deliver the Goods.
- 8.4 If you refuse to take delivery of any Goods and/or to allow performance of the Services then we shall be entitled to withhold delivery and/or performance of any other Goods and/or Services and to treat this Contract as cancelled by you.
- 8.5 If the parties agree that the Goods are to be collected from our premises then you shall collect the Goods between 8.30 am and 3.30 pm on Working Days within 3 Working Days of our notifying you that the Goods are ready for collection. If the Goods are not collected by you within this period we may despatch the Goods to you at your expense and risk and/or store the Goods at your expense and risk until despatch and/or collection.
- 8.6 We will have no Liability if we are prevented or delayed from performing our obligations under the Contract due to matters beyond our reasonable control and in such circumstances may choose to suspend our performance or cancel the Contract without this suspension or cancellation affecting our right to recover all sums owing to us in respect of orders or parts of orders already delivered and/or costs incurred at that date. Matters beyond our reasonable control shall include but not be limited to rules, regulations, requisitions or orders of the Government or a Local Authority, war, strike, accident, fire or shortages of labour or materials or non-delivery by our suppliers or damage to or destruction of the whole or part of the Goods.
- 8.7 We reserve the right to despatch and invoice any part of your order when it is available or any part of the Services when such part is completed.
- 8.8 We will try to accommodate you if you make a reasonable request for postponement of delivery but we shall not be obliged to do so. Where delivery is postponed for a reason other than our fault, you shall pay all costs and expenses of delay including a reasonable charge for storage and transportation.

9. Payment

- 9.1 You agree to pay our charges by the end of the month following the month in which we have sent you an invoice for the Goods and/or Services, even if the Goods have not been delivered to you at that time.
- 9.2 Time for payment will be of the essence of the Contract.
- 9.3 In addition to any other rights we may have, we will charge interest on any accounts not paid by the due date at whichever is the greater of 4% above Barclays Bank Plc base rate from time to time compounded with monthly rests or the rate of interest prescribed under the Late Payment of Commercial Debts (Interest) Act 1998. For the purposes of Sections 10 and 13 the full purchase price of the Goods and/or Services will include any interest payable under this Clause 9.3.
- 9.4 If any invoice is not paid by the due date we will be entitled to demand payment of all outstanding balances whether due or not and/or cancel all outstanding orders in addition to any other rights we may have.
- 9.5 We will also have the right to suspend performance of our obligations if we reasonably believe that you will not make payment in accordance with this Section 9.

10. **Passing of Risk**
- 10.1 Except for Goods delivered on the basis set out in Clause 9.1 and unless otherwise agreed in writing by us the risk in the Goods shall pass on delivery of the Goods to you or your agent or, if delivery is postponed at your request or due to your fault, when the Goods are ready for despatch.
11. **Retention of Title**
- 11.1 Even if the Contract is terminated we shall still have the rights set out in this Section 11.
- 11.2 We shall retain title and ownership of the Goods until we have received the full purchase price in cash or cleared funds due and/or owing for all Goods and/or Services supplied to you by us under this Contract and any other agreement between you and us.
- 11.3 Upon delivery of the Goods you shall hold the Goods solely as bailee for us and set the Goods aside separately identified as being our property.
- 11.4 Until title in the Goods has passed to you, we shall be entitled to recover the Goods or any part of the Goods and for the purpose of exercising our rights we, our employees, representatives and/or agents with appropriate transport may enter upon your premises and any other location where the Goods are situated.
- 11.5 You are granted a licence by us to incorporate the Goods in any other products.
- 11.6 You are licensed to sell the Goods and any products incorporating any of them. You shall, immediately upon receipt of the proceeds of sale, and whether or not payment has become due under Section 8 of these Conditions, pay to us the full purchase price of the Goods sold on less any part of the full purchase price which has already been paid and until such amount has been so paid you shall hold such amount as our trustee and agent.
- 11.7 From the date or dates on which risk in the Goods passes to you until title in the Goods has passed to you, you shall keep the Goods insured for the price at which the Goods were sold to you against all insurable risks. If any loss or damage occurs while the Goods remain our property you shall immediately upon receipt account to us for any proceeds of such insurance policy. Any monies we receive from you will not discharge your liability to pay the full purchase price for the Goods but shall be set off against such liability. Until you have accounted to us in accordance with this Clause 11.7, you shall hold any proceeds of such policy of insurance in relation to the Goods on trust for us.
- 11.8 The licences granted under Clauses 11.5 and 11.6 above shall end immediately at any time by our giving notice to you.
- 11.9 If we have to repossess Goods using the rights in this Section 11 it will not affect any other rights we may have against you. You shall bear any expenses incurred in such re-possession or any damage caused to any land by us in exercising their rights under these Conditions.
- 11.10 Our employees, representatives and/or agents shall be entitled to:-
- 11.10.1 enter onto your premises from time to time to check compliance with this Section 11; and/or
- 11.10.2 inspect all your books, accounts, records, documents and papers to determine what sums are due to us under Clause 11.6.
12. **Repairs and Replacements**
- 12.1 We will, at our option, either repair, replace free of charge or re-perform any defective Goods and/or Services where the defect is apparent on inspection provided that you have told us about the defect within 14 Working Days of delivery of such Goods and/or performance of the Services.
- 12.2 If we request we shall have the right to inspect the allegedly defective Goods and/or the subject-matter of any allegedly defective Services, and we will not have any Liability for defective Goods and/or Services until we have been allowed to make such inspection.
- 12.3 We may, at our option, either repair, replace free of charge or re-perform defective Goods and/or Services which you do not tell us about within the specified time limit where in our opinion the defect could not have been discovered on inspection and you have told us about it as soon as reasonably practicable.
- 12.4 We will, at our option, either replace free of charge any Goods missing from a delivery of Goods provided that you tell us the items missing within 5 Working Days of delivery or, in the event of total non-delivery you tell us of this within 21 Working Days of you receiving the invoice.
13. **Limitation of Liability**
- 13.1 The limitations in this Contract are necessary in order to allow us to provide the Goods and/or Services at our current prices. If you require greater protection then we will agree to modify the limitations in return for the payment of a higher price for the Goods and/or Services.
- 13.2 We shall have no Liability to you for defective Goods and/or Services, Goods not despatched or Goods damaged or lost in transit unless you have told us of the event within the appropriate time limits as set out in this Contract.
- 13.3 We shall have no Liability as a result from failure to follow any reasonable instructions that we may give you about the use and safe handling of the Goods.
- 13.4 Our Liability for defective Goods and/or Services is limited to replacing, repairing or re-performing the Goods and/or as set out in Section 12 above.
- 13.5 Where we agree to repair or replace Goods or carry out again any Services any time specified for delivery or performance under the Contract will be extended for such period as we may reasonably require.
- 13.6 We shall have no Liability to you for any:-
- 13.6.1 consequential and/or indirect losses;
- 13.6.2 loss of profits and/or damage to goodwill;
- 13.6.3 special damages, economic and/or other similar losses;
- 13.6.4 exemplary, additional, aggravated and/or punitive damages; and/or
- 13.6.5 business interruption, loss of business, contracts, opportunity and/or production.
- 13.7 Our total Liability to you shall not be more than:
- 13.7.1 £500,000 for any claims which arise as a result of damage to property;
- 13.7.2 or the Contract price of the Goods and/or Services to which the order relates for any claims which are not as a result of damage to property.
- 13.8 Each of the limitations and/or exclusions in these Conditions shall be repeated and apply to Liability in contract (including fundamental breach), Liability in tort (including negligence), Liability for breach of statutory duty, Liability for breach of Common Law, except Clause 13.7 which shall apply once only in respect of all these types of Liability.
- 13.9 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 13.10 Nothing in this Contract shall exclude or limit our responsibility to you for death or personal injury which occurs as a result of our negligence or any Liability which is due to our fraud or any other matters for which we are not allowed to exclude or limit our responsibility as a matter of law.
14. **Cancellation or Deferment**
- 14.1 If you:-
- 14.1.1 fail to make any payment to us when due;
- 14.1.2 breach any of these Conditions (and, if the breach is capable of being put right you have not put it right within 14 days of receiving a notice from us asking you to put it right);
- 14.1.3 persistently breach any one or more terms of these Conditions;
- 14.1.4 pledge or charge any Goods which remain ours, or stop or threaten to stop carrying on business, or propose to compound with your creditors, apply for an interim order under Section 252 Insolvency Act 1986 or have a Bankruptcy Petition presented against you, enter into voluntary or compulsory liquidation, have a receiver, administrator or administrative receiver appointed over all or any of your assets, or take or suffer any similar action in any country;
- 14.1.5 appear to us to be financially unable to meet your obligations under the Contract; and/or
- 14.1.6 appear reasonably to us to be about to suffer any of the above events; then we shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in Clause 14.2 below.
- 14.2 If any of the events set out in Clause 14.1 happens to you:-
- 14.2.1 we may enter, without prior notice, any of your premises (or premises of third parties with their consent) where Goods owned by us may be and repossess and dispose of or sell any Goods found which are owned by us so as to discharge any sums due to us under this Contract or any other agreement we have with you;
- 14.2.2 you will automatically no longer be entitled to re-sell, use or part with the possession of any Goods owned by us and the licences granted under Clauses 11.5 and 11.6 shall immediately end until you have paid in full all sums due to us under this Contract or any other agreement you have with us unless we give our express written agreement to such use and/or disposal of the Goods;
- 14.2.3 we may withhold delivery of any undelivered Goods and stop any Goods in transit;
- 14.2.4 we may withhold the performance of any Services and cease any Services in progress;
- 14.2.5 we may cancel, terminate and/or suspend without Liability to you any Contract with you; and/or
- 14.2.6 all monies owed by you to us shall become immediately due and payable.
- 14.3 Orders placed cannot be cancelled except with our written consent and on terms which will indemnify us for any loss we have suffered.
- 14.4 Without prejudice to the provisions of Section 13 Goods returned without our consent will not be accepted for credit. Where Goods are returned with our prior written consent it shall be your responsibility (at your entire risk and expense) to return the Goods to us in good and saleable condition. We will charge an additional minimum charge of 25% of the purchase price of the Goods to cover handling and expenses.
15. **Installation and other Services**
- 15.1 To allow us to perform our obligations under these Conditions, you will provide to us and will make sure that any other third party in control of the site where Services are to be performed provides (where applicable):-
- 15.1.1 sufficient and suitable access to any site at which Services are to be performed;
- 15.1.2 a cleared, prepared, and safe site which complies with all applicable statutory or other regulations and codes of practice;
- 15.1.3 secure protection (from the time of delivery) of any Goods in respect of which Services are being performed; and
- 15.1.4 all necessary information, including but not being limited to any relevant health and safety policies applicable to any of our personnel when carrying out the Services.
- 15.2 You will indemnify us for any Liability incurred by us as a result of you (or any applicable third party) not doing any of the things set out in Clause 15.1.
16. **Testing**
- 16.1 If we agree that any tests shall be carried out in your presence we shall notify you of the date on which we will be ready to carry out such tests and you will attend at the premises where the Goods are situated on the date specified by us for the purpose of witnessing the tests. You agree that if you do not attend we may carry on with the tests in your absence and you shall be bound by the results of those tests.
17. **General**
- 17.1 The parties to the Contract will at all times keep confidential and not use, except for purposes contemplated by this Contract, any and all information acquired in consequence of the Contract (including but not being limited to information relating to the Goods and/or the Services), except for information which they may be entitled or bound to disclose under compulsion of law or where requested by regulatory agencies or to their professional advisers where reasonably necessary for the performance of their professional services.
- 17.2 You shall not assign, sub-contract, transfer or in any other way deal in your rights or obligations under this Contract without our prior written consent. We shall be entitled to sub-contract the whole or any part of our rights or obligations under this Contract.
- 17.3 These Conditions and the Contract are governed by English Law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts in the event of any dispute.
- 17.4 The headings in these Conditions are inserted for convenience only. They are not to affect their interpretation or construction.
- 17.5 If any provision of these Conditions is or becomes illegal or void for any reason, the validity of the remaining provisions shall not be affected.
- 17.6 These Conditions and the Contract or any part of them shall not be enforceable by any person who is not a party to them.
- 17.7 Failure by us to ensure you comply with these Conditions will not constitute a waiver of any of them.
- The above Terms and Conditions of Sale are effective from [] 2004.