

# Terms and Conditions

## E-Plex Ltd

**We are E-Plex Limited**  
**(English Company Number 5312372)**  
**YOU ARE OUR CUSTOMER.**

### **1 MAKING THE CONTRACT**

- 1.1 If we send you a quotation then that quotation does not bind us to sell you the goods, and does not bind you to buy the goods. We may withdraw the quotation at any time without notice. All quotations lapse after 28 days. If you wish to buy goods you should send us an order.
- 1.2 Your order is an invitation to treat.
- 1.3 Our acknowledgement of order (or our delivery note if we do not send you an acknowledgement of order) is an offer to sell only the goods identified in it at those prices on these terms. As it is based on your order, it will be treated as accepted and the contract made unless we receive your written cancellation within two working days.
- 1.4 All goods sold by us are sold on these terms and those on the acknowledgement of order (or our delivery note if we do not send you an acknowledgement of order); only our directors are able to vary them and then only in writing. No other terms (other than those on our acknowledgement of order) whether put forward by you or implied by statute shall apply.

### **2 CANCELLATION**

- 2.1 Contracts can be varied or cancelled only with our consent (which will be shown only by the issue of a revised acknowledgement of order).
- 2.2 If we agree to cancel or vary a contract after we have bought or manufactured goods for it, we may charge a cancellation fee to compensate us for the expenses of disposal.
- 2.3 If we are dependent on a supplier who fails to supply a necessary component of the goods, we will tell you and (if we are able to), offer you an alternative. If we cannot offer an alternative, or if we do not get your written approval to it (within seven days) the contract will be void (but only for those goods).

### **3 PRICE**

- 3.1 The price, unless otherwise stated, excludes:-
  - packaging
  - delivery
  - insurance
  - installation
  - VAT.
- 3.2 If we suffer a major increase in costs, we may increase the price; if so, we shall tell you as soon as possible.

### **4 PAYMENT**

- 4.1 Payment is required before delivery unless an approved credit account has been opened. Credit terms on approved accounts must be adhered to. We reserve the right to demand payment at any time.
- 4.2 We may charge interest on late payments at 2% per month (or part). Interest accrues daily and runs before and after judgement. If you pay late, you must also pay (in full) any legal expenses incurred by us.
- 4.3 You may not withhold payment because of any dispute, or claim any set off.
- 4.4 We may apply any payment to any invoice and ignore contrary instructions given by you.
- 4.5 We may require a deposit as a term of the contract.
- 4.6 Deposits are not refundable.
- 4.7 We may (at any time) suspend manufacture or delivery unless you give us security for payment (including any deposit requested).
- 4.8 We may change the limit on an approved credit account (if in our absolute discretion we grant you an approved credit account) at any time. If the limit is exceeded, the excess must be paid immediately.

### **5 DELIVERY**

- 5.1 Delivery shall be ex works unless otherwise stated on our acknowledgement of order.
- 5.2 The delivery date is not of the essence and you may not reduce the price or make a claim against us if the goods are delivered after then. If we do

not deliver then, we shall use our best efforts to deliver within a reasonable time afterwards.

- 5.3 We may deliver in stages and invoice you separately for each stage. Each stage will be treated as a separate contract.
- 5.4 If the goods delivered vary (by 10% or less) from the acknowledgement of order in quantity, quality or description, you must pay for them at the contract rate.
- 5.5 If you ask us to delay delivery, we will do so if we can, but may charge you for storage.
- 5.6 You give us the right of access to all premises under your control to deliver, inspect and remove the goods. That right may not be revoked until you have paid all that you may owe us.
- 5.7 Where:-
  - 5.7.1.1 your goods are in our possession; or
  - 5.7.1.2 you have ordered goods from us; and it is your duty to collect the goods from us or notify us of a delivery destination, and/or pay us prior to delivery, we may, after giving you 7 days notice in writing that you have failed to do so:-
    - 5.7.2.1 charge a reasonable weekly storage fee until you either collect the goods or notify us of a delivery destination; and/or
    - 5.7.2.2 treat you as having repudiated the contract;
    - 5.7.2.3 make a cancellation charge.If we treat you as having repudiated the contract then we have the right to sell the goods as your agent at such price as we see fit. We will credit the proceeds of sale against the price of the goods (and any other money that you owe us).

## **6 RISK**

- 6.1 The goods are at your risk from when you receive them.

## **7 INSPECTION AND SHORTAGES**

- 7.1 You must inspect the goods as soon as you receive them.
- 7.2 If you cannot examine the goods, the delivery note must be marked "not examined".
- 7.3 We are not liable for shortages or defects that should have been seen on a careful inspection and which you do not tell us about within 2 days of delivery (and confirm in writing).
- 7.4 We are not liable for any other defects unless we receive a written complaint within 7 days of delivery.
- 7.5 If we are told about defects and shortages within those time limits, we will supply replacements or adjust the price but otherwise you may not make any claim or reduce the price.

## **8 OWNERSHIP AND TITLE**

- 8.1 For so long as any amounts remain owing in respect of the goods or any other amounts whatsoever remain owing or which may become due to the seller (the company) from the buyer (the customer) on any account: title to and property in any of the goods shall remain with the seller and the goods shall be held by the buyer on behalf of the seller in a fiduciary capacity, but may not commit us to any liability under contract.
- 8.2 The buyer may sell such goods to a third party in the ordinary course of the buyer's business, provided that any such sale shall be made as agent for the seller. Notwithstanding that delivery has taken place, the parts shall remain the sole and absolute property of the company as legal and equitable owner until such time as the customer shall have paid to the company the price together with all interest, costs and expenses which may have accrued due.
- 8.3 Both the third party and the customer acknowledge that they are in possession of the product solely as bailee for the company until such time as all the foregoing sums have been paid to the company.
- 8.4 The customer's right to possession of the product ceases if he does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding up. The company may for the purposes of recovery of its product enter upon any premises or the vessel where the same is stored or where it is reasonably thought to be stored and may possess the same.
- 8.5 If the product, the property of the company, is fixed or integrated with machinery, the property of the customer, the property thereof shall become and/or shall be deemed to be the sole and exclusive property of the company. If the product the property of the company is fixed or integrated with the product the property of any other person, then the customer the product thereof shall become or deemed to be owned in common with other such persons.

## **9 WARRANTIES**

- 9.1 We have the right to sell the goods to you.
- 9.2 The goods will conform (in material respects) with any sample, but we may improve their composition or specification without notice.
- 9.3 The goods will be as described in the acknowledgement of order (but the delivery date is not part of that description).
- 9.4 Where we have serviced or overhauled your goods they will be governed by these terms in the same way, so far as possible, as goods we sell to you. In particular you must use the goods in accordance with clause 12 of these terms.
- 9.5 All goods supplied come with manufacturers warranties. Please ask for a copy. Those

warranties form part of these terms for those classes of goods only. We are under no liability under the warranty (or any other warranty, condition or guarantee) until the total price for the goods has been paid.

- 9.6 Any warranty claim must initially be made to us. We will advise you of the correct warranty procedure for the goods in question.
- 9.7 Subject as expressly provided in these terms, all warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.8 Save as otherwise expressly provided in these terms, the following provisions set out our entire liability (including any liability for the acts and omissions of our employees, agents and sub-contractors) whether in contract, misrepresentation (other than fraudulent misrepresentation) or tort, including negligence or otherwise howsoever arising.
- 9.9 To the extent the law does not permit such liability to be excluded.
- 9.9.1 if you are a consumer (defined in s.12 Unfair Contract Terms Act 1977), ss. 13, 14 and 15 Sale of Goods Act 1979 and the Consumer Protection Act 1987 applies;
- 9.9.2 we do not exclude or restrict our liability for death or personal injury from our negligence;
- 9.9.3 we accept liability for damage to your tangible property resulting from our negligence not exceeding £1,000,000 for any one incident or series of incidents rising from a common cause.
- 9.10 Subject to clause 9.8.2 above, we shall not be liable for any loss of use, costs of removal, damage caused by removal, costs of transportation, costs of installation of repaired or replacement goods and making good any damage caused by removal, increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of financial, special, indirect or consequential use including loss or damage suffered by you as a result of a claim made by a third party) even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the same.
- 9.11 In any event, our total liability is limited to the price of the goods or services under the contract in respect of which the claim arises, save as provided in clauses 9.9.1 to 9.9.3.
- 9.12 Subject to clause 9.9.2, we shall not be liable for any claim arising from your failure to use goods supplied in accordance with any written instructions supplied.
- 9.13 You shall indemnify us in respect of any cost, loss or liability arising in connection with any claim made by any person in connection with the misuse of goods or services provided by us.
- 9.14 Your statutory rights are not affected by these terms where you are a consumer and the goods are sold under a consumer transaction (defined

by the Consumer Transactions Restrictions on Statements) Order 1976).

- 9.15 Our promotional materials give general information only unless they are specifically referred to in the acknowledgement of order form; the goods may vary from any description in them.

## **10 INDEMNITIES**

- 10.1 You will indemnify us in full against claims or loss arising out of any negligence, carelessness or breach of any of these terms by you, your employees or agents.

## **11 FORCE MAJEURE**

- 11.1 We are not liable for delays caused by matters outside our reasonable control, such as:-
- act of God - war - riots and civil disturbances
  - fire or explosions - trade disputes -
  - British or foreign government action or regulations
  - delay by suppliers - accidents -
  - shortage of materials, labour or manufacturing facilities or others.

## **12 USE**

- 12.1 Installation and operating manuals are available for all of our products. You must ensure that (after the goods have been delivered to you) every person who handles them or has possession of them has full instructions for their safe use, handling and installation.
- 12.2 You must use, store, handle and install the goods safely and in accordance with our instructions.
- 12.3 You may not modify or alter the goods or any markings on them in any way without first receiving our written permission.
- 12.4 You must ensure that the goods are appropriate for all purposes for which you want them; they are supplied only on the basis that you have done so and are not relying on any statement we may have made.
- 12.5 You must not use the goods other than for normal seafaring and general boating uses. In particular you must not put them to any unusual use such as racing or competition of any kind.

## **13 BREACH**

- 13.1 You will be treated as having repudiated the contract if you:-
- 13.1.1 become insolvent; or
  - 13.1.2 commit a serious breach or one which is not remedied within 7 days of being asked to do so.
- 13.2 You may be treated as having repudiated the contract if you:-
- 13.2.1 do not make a payment when due; or
  - 13.2.2 fail to accept delivery or give delivery instructions.
- 13.3 If you repudiate the contract:-
- 13.3.1 all invoices sent to you must be paid immediately;
  - 13.3.2 the price of all goods not invoiced but

delivered by us or manufactured or ordered for sale to you must be paid immediately; and

- 13.3.3 we will be released from all future obligations under all contracts.
- 13.4 You may be treated as insolvent if:-
  - 13.4.1 you are a company which has a petition for winding up or administration presented against it, or passes a resolution for winding up;
  - 13.4.2 a receiver of any of your assets is appointed;
  - 13.4.3 you convene a meeting of your creditors
  - 13.4.4 you (or any of your partners) become bankrupt;
  - 13.4.5 you are unable to pay your debts (defined in ss.123 or 286 Insolvency Act 1986);
  - 13.3.6 one of your creditors tries to serve on you a document purporting to be a statutory demand (under ss 123(1)(a), 222(1)(a) or 268(1)(a) Insolvency Act 1986);
  - 13.4.7 a judgement entered against you (by any creditor) remains unsatisfied after 7 days; or
  - 13.4.8 anything similar happens in a foreign jurisdiction.

## **14 GENERAL**

- 14.1 Written notices may be sent by post or fax to the address on the acknowledgement of order. If sent by fax, they may be treated as received on the first working day after transmission. If posted first class on the second working day after posting.
- 14.2 You may not transfer your rights under any contract.
- 14.3 If we do not exercise all of our rights under any contract, that will not constitute a waiver of any of our rights unless confirmed in writing by us.
- 14.4 English Law applies; English courts have non-exclusive jurisdiction.
- 14.5 Every reference to the goods is a reference to each of the goods.
- 14.6 If any provision of these terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and the remainder of the provision in question shall not be affected.
- 14.7 These terms and our acknowledgement of order constitute the entire agreement between us and replace and supersede any other agreements, understandings, representations or statements.
- 14.8 Our rights under these terms are cumulative.