

Traka plc – Terms and Conditions of Sale

1 Definitions

In these terms and conditions of sale ('Conditions') Traka plc is called the 'Company' and any individual firm, Company or other party with whom Traka plc contracts is called the 'Customer'. All hardware, software and firmware and any other products that the Company agrees to supply to the customer are called 'Goods'.

2 Quotations

Any quotation given by the Company is only an invitation to the Customer to make an offer and no order of the customer placed with the Company in pursuance of a quotation or otherwise shall be binding on the Company until it is accepted in writing by the Company. This will normally be done by means of the Company sending an Acknowledgement of Order form to the Customer. All contracts entered into between the Company and the Customer (hereinafter called 'Contracts' and each a 'Contract') shall incorporate and be subject to these Conditions to the exclusion of all other terms and conditions including any which the customer may purport to apply in any order form or similar. All Contracts are personal to the Customer who shall not be permitted to assign the benefit thereof without the Company's written consent. All prices contained in quotations and Acknowledgement of Order forms are net of VAT and the Company shall be entitled in addition to charge VAT at the then prevailing rate.

3 Price

Unless it is a term of the particular Contract that the price quoted by the Company shall remain fixed, the price payable by the customer for the Goods shall be the Company's prevailing price at the date of dispatch of the Goods.

4 Dispatch

(a) Whilst the Company will make commercially reasonable endeavours to comply with any date or dates specified by it for dispatch or delivery of the Goods, such date or dates shall constitute a statement of expectation only and save as set out in this clause 4 shall not be binding on the Company. The Customer shall not be entitled to make time of the essence by serving notice to that effect on the Company.

(b) If no dates are specified by the Company for dispatch or delivery of any particular Goods, delivery of those Goods shall be within a reasonable time.

(c) In the event that the Company shall fail to deliver the Goods within 4 weeks following the date specified for delivery of the same, the customer shall be entitled to and its sole remedy shall be to cancel the Contract in respect of those particular Goods (but not any other Contract in respect of any other Goods) provided that written notice of such cancellation is served on the Company prior to delivery of those particular Goods taking place. In the event that the customer cancels any Contract pursuant to this clause 4 (c) the Company shall reimburse the customer any deposit or other monies paid on account of the Goods which are the subject of such cancelled Contract. The Customer shall not be entitled to any other compensation arising out of such cancellation.

5 Delivery

(a) Unless otherwise agreed in writing, the price agreed for the Goods shall include carriage to the Customer's stated premises, provided this is within the United Kingdom, and standard packaging. Where the Customer's premises are situated outside the United Kingdom the delivery terms will be Ex Works unless agreed otherwise in advance in writing and in accordance with the International Chamber of Commerce 'Incoterms 2006'.

(b) The Customer shall be responsible for all taxes and duties and any similar payments which are payable in connection with the delivery of the Goods to those premises. The Customer shall also be responsible for any additional or specific packaging requirements.

(c) Unless otherwise provided in the Contract relating to any particular Goods, the price of those Goods does not include the cost of off-loading those Goods, which shall be arranged by the Customer and performed at its sole expense and risk.

(d) Where any Contract relates to several items of Goods the Company shall be entitled to make delivery of such Goods in several batches.

6 Risk

Where the Company itself delivers the Goods, the risk in those Goods shall (subject to clause 5(b) above) pass to the Customer on delivery. In all other cases, the risk in the Goods shall pass to the Customer when the Goods leave the Company's premises.

Where the Company itself delivers the Goods, the Company undertakes to replace or (at its discretion) to repair free of charge any Goods damaged in transit in which event the time for delivery of the Goods shall be extended for such a period as the Company reasonably requires to enable the replacement Goods to be manufactured and delivered or for the repairs and re-delivery to be carried out. It is a condition precedent of this undertaking that (i) the Customer shall give written notice of such damage in transit with reasonable particulars thereof to the Company within 7 days of receipt of the Goods and (ii) the Customer, if requested by the Company to do so, shall return the damaged Goods to the Company within 14 days of receipt of such request.

7 Title

(a) Notwithstanding that the risk in the Goods has passed to the Customer the ownership of the Goods shall remain with the Company until the Company has received full payment of all sums due to it in respect of:

(i) the Goods; and

(ii) all other sums which are due to the Company from the Customer on any other account whatsoever.

(b) The Goods shall so far as practicable be kept separate from other goods on the premises of the Customer so as to be readily identifiable as the Goods of the Company.

(c) If payment is overdue in whole or in part the Company may (without prejudice to any of its other rights) recover or resell the Goods or any part thereof and may enter upon the Customer's premises by its servants or agents for such purpose. Such payment shall become due immediately upon the commencement of any action or proceeding relating in any way to the Customer's solvency.

(d) If any of the Goods are incorporated in or used as materials for other goods before full payment is made in respect of those Goods the Company shall nevertheless be entitled to detach the Goods from those other goods subject to making good any damage caused.

(e) Nothing in this clause shall confer any right upon the Customer to return the Goods sold hereunder or to refuse or delay payment thereof.

8 Payment

(a) All invoices submitted by the Company to the Customer in respect of any Goods shall be paid within 30 days from date of that invoice, unless otherwise agreed in writing.

(b) The Company shall be entitled to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 if invoices are not paid according to these credit terms.

(c) Where any sum owed by the Customer to the Company under the Contract or any other Contract with the Company is overdue, or if at any time the credit standing of the Customer has in the opinion of the Company been impaired for any reason, the Company may at its own absolute discretion, demand payment of all outstanding balances whether due or not and/or cancel outstanding orders and decline to make further deliveries except upon receipt of cash or satisfactory security. The setting off or withholding of payment by the Customer in respect of any claim shall not be permitted unless expressly agreed by the Company in writing.

9 Specification

Unless the Contract in respect of any particular Goods expressly provides otherwise all statements as to performance and any other data relating to the Goods supplied by the Company are approximate only.

It is the policy of the Company to continuously seek to improve the quality of its Goods and the Company may make variations to specification for this reason without notice.

10 Warranty

10.1 The Company warrants to the Customer that the Goods will be free from defects in material and workmanship for a period of twelve months from the date of delivery to the Customer (the 'Warranty Period').

In the event that any Goods fail to comply with such warranty the Company shall, at its sole discretion, be entitled EITHER (i) to repair or replace such Goods or (ii) to reimburse the Customer the invoice price paid for those Goods (or to set such price off against any other sums which are owed by the Customer to the Company, whether such sums are due for immediate payment or not) PROVIDED always that the Company shall not be obliged to offer either remedy to the Customer unless:

(a) The Customer supplies the Company with full written details of the defect alleged within the Warranty Period; and

(b) the Customer returns the defective Goods to the Company or, if requested by the Company, the Customer procures that the Company and/or its representatives is able to inspect the allegedly defective Goods in situ.

10.2 The repair or replacement of defective Goods during the Warranty Period in accordance with clause 10.1 shall not extend the original Warranty Period granted in respect of such Goods.

10.3 The provisions of clause 10.1 do not extend to any Goods which have been subjected to misuse, accident or improper installation, maintenance, application or operation nor do they extend to Goods which have been repaired or altered otherwise than by the agents or employees of the Company unless previously authorised in writing by the Company.

10.4 The warranty contained in the clause 10 is expressly accepted by the Customer in lieu of any and all other terms, warranties, conditions or liabilities whether expressed or implied in fact or in law, relating to the state, quality, description, capacity, design, construction operation, use or performance of the Goods or to the merchantability repair or fitness for a particular purpose of the Goods or otherwise whatsoever.

11 Limitation of Liability

(a) The Company shall not be liable to the Customer whether in contract, tort (including negligence) statute or otherwise, for any loss of profit, loss of revenue, loss of business, depletion of goodwill, loss of use, loss of any contract, or any liability of the Customer to any third party, or for any consequential, indirect or special losses whatsoever (howsoever caused), and which arise out of or in connection with the Contract and/or the sale or supply of the Goods (or any of them).

(b) Without prejudice to the provisions of clause 10 and clause 11 (a) above, the Company's total liability in the contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall in any event be limited to the sum of £1,000,000 per claim or series of connected claims.

(c) Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence, or for fraud or fraudulent misrepresentation.

(d) It is the exclusive responsibility of the Customer to satisfy itself that the Goods are suitable for the particular purpose for which they are required notwithstanding that he shall make known such purpose to the company before entering into the Contract. In the event that the Customer requires the Goods for a purpose other than that for which the Goods are commonly supplied, the Customer shall not be entitled to rely on any advice or skill or judgement provided by the Company in respect of the Goods for such purpose.

12 Cancellation

The Contract may be cancelled by the Customer only with the Company's written consent or in accordance with clause 4(c) above. In the event of such cancellation the Customer shall pay the Company a cancellation charge commensurate with the Company's costs incurred up to the date of cancellation plus an amount to compensate the Company for its loss of the profit it would have otherwise made on the sale of those Goods.

13 Intellectual Property

The Company retains all industrial and intellectual property rights ('Rights') in and over the Goods or any part of the same (including but not limited to any software and firmware forming all or part of, or incorporated into the Goods). Such Rights shall include without limitation patents, trade marks and/or service marks (whether registered or unregistered), registered design rights, unregistered design rights, copyrights, and any applications for any of the foregoing in any part of the world, and the copyright in all drawings, plans, specifications, designs and computer software and firmware and all know-how (trade secrets) and confidential information.

The Customer agrees not to disclose details of any of the Rights to any third party and at all times to keep the same strictly confidential. The Customer may take copies of any software included in the Goods, but only for the purpose of back-up security and agrees that these shall also be kept confidential.

14 Data Protection

In respect of all personal data received from the other, both the Customer and the Company, shall comply at all times with the requirements of the Data Protection Act 1998 and all regulations made there under.

15 Force Majeure

The Company will make every effort to carry out the Contract in accordance with its terms but it shall not be liable for any failure on its part to perform any term of the Contract arising from any cause outside the Company's reasonable control including (but without prejudice to the generality of the foregoing) act of God, war, strike, lock out or any other industrial dispute, fire, flood shortages of materials or breakdown of machinery or plant, and in these circumstances the Company expressly reserves the right to cancel or suspend the whole or any part of any Contract or the delivery of any Goods.

16 Governing Law & Jurisdiction

The Contract shall be governed by and construed in accordance with English Law.

All disputes arising out of or in connection with the Contract shall be finally settled under the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The venue for any such arbitration shall be London, England or such other venue as the Company may stipulate.