

Tekonics Limited

Orchard House, Orchard Business Centre, Unit 1, North Farm Road, Tunbridge Wells, Kent TN2 3DY

Terms and Conditions

1. Interpretation

1.1 In these conditions the following words have the following meanings:

the Buyer: you

the Seller: **Tekonics Limited**, Orchard House, Orchard Business Centre, Unit 1, North Farm Road, Tunbridge Wells, Kent TN2 3DY

the Contract: any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).

2. Application of Terms

2.1 Subject to any variation under condition 2.2 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 These conditions apply to all the Seller's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Seller.

2.3 Any quotation is given on the basis that no contract will come into existence until the Seller despatches an acknowledgement of order to the Buyer. Any quotation is valid on the day of issue only.

3. Delivery of the Products

3.1 Unless otherwise agreed the delivery of the Goods shall take place at the Buyer's premises or such other location as the Buyer shall specify in their acceptance of the Seller's offer which has been acknowledged by the Seller ("the Delivery Point"). The Seller shall arrange for suitable transport and insurance to the Delivery Point and the Buyer will pay for the related costs and expenses in arranging delivery in addition to the price agreed for the Goods.

3.2 Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified delivery will be within a reasonable time.

3.3 Subject to the other provisions of these conditions the Seller will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence).

3.4 If the Seller delivers to the Buyer a quantity of Goods in instalments each instalment will be deemed to be a separate contract.

4. Non-Delivery

4.1 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

4.2 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless written notice is given to the Seller within 14 days of the date when the Goods would in the ordinary course of events have been received.

4.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

5. Transfer of Title

5.1 The Goods are at the risk of the Buyer from the time of delivery. Title to the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Seller from the Buyer on any account.

5.2 Until ownership of the Goods has passed to the Buyer, the Buyer must:

5.2.1 hold the Goods on a fiduciary basis as the Seller's bailee and store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

5.2.2 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller.

5.3 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

5.3.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

5.3.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

5.4 The Buyer's right to possession of the Goods shall terminate immediately if:

5.4.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or enters into liquidation (whether voluntary or compulsory) any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or the Buyer encumbers or in any way charges any of the Goods.

5.5 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

6. Price

6.1 Unless otherwise agreed by the Seller in writing the price for the Goods shall be the price quoted in the Contract. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

6.2 The Seller reserves the right without notice to alter the price of goods due to circumstances beyond the Seller's control, and to correct errors and omissions.

7. Payment

7.1 The Buyer shall establish a credit account with the Seller which the Buyer shall discharge at the end of each calendar month or within 30 days of the date of the invoice which ever is the later.

7.2 In the event that the Buyer has not established a credit account with the Seller for whatever reason payment for the Goods shall be made on demand.

7.3 The Seller reserves the right to suspend all deliveries where payment is not received in accordance with condition 7.1 or in accordance with any alternative arrangement agreed in writing by the Seller. In such an event any agreed period of credit is cancelled and all monies owed to the Seller by the Buyer becomes immediately payable. No payment shall be deemed to have been received until the Seller has received cleared funds.

7.4 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of HSBC Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

Tekonics Limited

Orchard House, Orchard Business Centre, Unit 1, North Farm Road, Tunbridge Wells, Kent TN2 3DY

8. Warranty

8.1 The Seller warrants that (subject to the other provisions of these conditions) upon delivery and throughout the period of the Buyer's ownership of the Goods the Goods will:

8.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

8.1.2 be reasonably fit for any purpose for which the Goods are being bought if the Buyer had made known that purpose to the Seller in writing and the Seller has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Seller.

8.2 The Seller shall not be liable for a breach of any of the warranties in condition 8.1 unless:

8.2.1 the Buyer gives written notice of the defect to the Seller within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and

8.2.2 The Goods are returned to the Seller at the Buyer's cost; and

8.2.3 The Seller is given a reasonable opportunity of examining the Goods.

8.3 The Seller shall not be liable for a breach of any of the warranties in condition 8.1 if the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice or the Goods were misused or the Buyer altered or repaired such Goods without the written consent of the Seller.

8.4 Subject to conditions 8.2 if any of the Goods do not conform with any of the warranties in condition 8.1 the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if the Seller so requests, the Buyer shall return the Goods or the part of such Goods which is defective to the Seller.

8.5 If the Seller complies with condition 8.4 they shall have no further liability for a breach of any of the warranties in condition 8.1 in respect of such Goods.

8.6 If on examination no defects are discovered the Buyer shall pay to the Seller the cost of the examination as certified by the Seller.

8.7 In addition to the warranty given in this clause 8, the Seller assigns to the Buyer as far as the Seller is able the benefit of any warranty given by a manufacturer of the Goods

9. Returned Goods

9.1 Except under condition 8 the Goods may not be returned to the Seller without previous written consent from the Seller and must be in the same condition as when delivered by the Seller.

9.2 Where consent is obtained the Seller reserves the right to charge the Buyer up to 25% of the Price of the Goods and all additional costs.

9.3 Telephone Orders

9.4 Orders will only be accepted by telephone if the Buyer quotes an official order number when the order is made. The Seller will not accept any liability for duplication of delivery unless the Buyer can provide a confirmation reference number given to the Buyer when the order was accepted over the telephone.

10. Limitation of Liability

10.1 For the purposes of commercial certainty and subject to condition 8 the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

10.4 Subject to conditions 10.2 and 10.3:

10.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price agreed in the Contract for the Goods and in any event shall not exceed the Seller's limit of indemnity for product liability under its current insurance policy and

10.4.2 the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.4.3 It shall be the Buyer's sole responsibility to take out any appropriate insurance to insure against any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. Force Majeure

The Seller reserves the right to defer the date of delivery or to cancel the Contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or causes arising from the act or omissions of the Buyer.

12. General

12.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

12.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

12.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

12.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13. Subcontracting

The Seller reserves the right to sub-contract at its discretion any part of the work of the supply of the Goods for which the seller provides a quote.

14. Law and Jurisdiction

14.1 The Contract shall be governed by and construed in accordance with English law and the parties irrevocably agree to submit to the jurisdiction of the English courts.