

APATECH LIMITED TERMS & CONDITIONS OF SALE

1. Interpretation

In these Terms and Conditions the headings are inserted for convenience only and shall not affect or limit the interpretation thereof. The following terms have the following meanings:

- "Agreement"** – shall mean any agreement, which incorporates the Conditions.
- "Approved Customer"** – shall mean any firm, company or person to whom the Company is willing to sell Products.
- "The Company"** – shall mean Apatech Limited, a company registered in England and Wales, having its registered office at 370 Centennial Avenue, Centennial Park, Epsom, Hertfordshire WD6 3TJ, United Kingdom.
- "Customer"** – shall mean any Approved Customer who purchases any of the Products for its own use.
- "Order"** – shall mean an order placed by a Customer and accepted by the Company.
- "Invoice"** – shall mean the document sent to the Customer by the Company in demand of payment for the Products under the relevant Order.
- "Price"** – shall mean the charge for Products.
- "Products"** – shall mean those items supplied by the Company under the relevant Order.

2. Orders and Specifications

- 2.1 The Customer shall be responsible to the Company for insuring the accuracy of any Order.
- 2.2 The Company reserves the right to make any changes in the specification of the Products which are required to conform with any applicable statutory requirements or, where the Products are supplied to the Customer's specification, which do not materially affect their quality or performance.

3. Price and Payment

- 3.1 The price of the Products shall be the Company's quoted Price or where no Price has been quoted (or the quoted Price is no longer valid) the Price listed in the Company's Price list current at the date of acceptance of the Order and in any case as shown on the Invoice.
- 3.2 All Prices quoted are valid for 30 days and are inclusive of all normal UK delivery charges.
- 3.3 For the avoidance of doubt, the Company reserves the right to charge the customer any additional costs that may be incurred by the Company in the event that the customer requests an Order to be specially delivered by courier or by any other similar means, or to a non-UK address.
- 3.4 All Prices and any additional charges payable under this Agreement are exclusive of all sales taxes including Value Added Tax and any other applicable taxes, rates, governmental levies or duty.
- 3.5 The Company reserves the right to alter the Price of its Products without prior notice and to correct errors and omissions.
- 3.6 The Company shall submit an itemised invoice for the price of the Products on or any time after delivery of the Products. Settlement of such Invoices shall be within 30 days from the date of Invoice.
- 3.7 The Company reserves the right to charge interest on sums more than seven days overdue at a rate of 2% per month accruing daily.

4. Customer Obligations

- 4.1 The Customer shall use and maintain the Products in the manner contemplated by the Product Description. The Customer shall supervise, manage and control the proper use of the Products in a manner which the Company may specify from time to time.
- 4.2 The Customer shall be responsible for complying with all Customer applicable regulatory requirements.

5. Delivery

- 5.1 Any dates quoted for delivery are approximate only and the Company shall not be liable for any delay in delivery whatsoever caused.
- 5.2 Where delivery is to be made by instalments, each delivery shall constitute a separate contract and the failure by the Company to deliver any one or more of the instalments shall not entitle the Customer to treat the contract as a whole as repudiated.
- 5.3 Any claims by the Customer for non-delivery of agreed urgent Orders supplied by courier or special delivery method will be notified to the Company in writing within seven days of the date from which delivery was due. Any claims for damage or short delivery of the Products must be made in writing to the Company within three days of receipt of the Order.

6. Title and Risk

- 6.1 Title shall pass to the Customer on payment in full of the price of the Order and of any other sums due and payable by the Customer to the Company at any time.
- 6.2 The Customer shall hold the Products as the Company's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected, insured and identified as the Company's property until such time as title passes to the Customer and shall deliver up the Products to the Company upon demand.
- 6.3 Risk of damage or loss passes to the Customer at the time when the Company tenders delivery.

7. Warranty

- 7.1 The Company warrants that the Products will correspond with their specification and/or Product Description at the time of delivery and will be free from defects in material and workmanship until the time of the "use by date" unless otherwise stated by the Company in its Price list current at the date of purchase subject to the following conditions:
- i) the Company shall be under no liability in respect of any defect in the Products arising from any design or specification supplied by the Customer, or arising due to parts, materials or equipment not manufactured by the Company;
- ii) the Company shall be under no liability in respect of any defects arising or resulting from improper use, accidental or willful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or modification or alteration of the Products by unauthorised third parties or the Customer;
- iii) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment.
- 7.2 Except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), the warranty contained in 7.1 above is given in place of all warranties, conditions, terms, undertakings and obligations express or implied by statute, common law, custom, usage, trade course or dealing or otherwise (including but not limited to fitness for a particular purpose), all of which are excluded to the fullest extent permitted by law.
- 7.3 Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions Restrictions on Statements Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 7.4 Any claim by the Customer which is based on any defect in the quality or condition of the Products or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.
- 7.5 If before the expiry of the warranty period the Company receives written notice from the Customer of any breach of the warranty, the Company shall, within a reasonable time replace the Products or otherwise remedy such defects provided that the Products have not been tampered with or subjected to improper use of treatment and provided that the defects are not as a result of incorrect specifications provided by the Customer.
- 7.6 Any Products returned to the Company and replaced shall become the property of the Company (where title has passed to the Customer).

8. Returns

- 8.1 Products may not be returned without the written consent of the Company. No prescriptive, special, modified, discontinued, un-sterile, opened, damaged or defaced Products may be returned. Products accepted for return are subject to a handling charge of 15% of the Price of the Order (exclusive of VAT), such charge to be paid on demand.
- 8.2 All costs of returning Products to the Company shall be borne by the Customer. Products are returned at the risk of the Customer and any losses in respect of damage caused in transit will, during their return, be charged to the Customer. All returned Products must be accompanied by the original packing note together with the reason for return of the Products.
- 8.3 All returned Products must be received by the Company within 7 days of the date of original delivery.
- 8.4 Customer shall provide an appropriate storage facility at the location indicated above. The product should be stored under conditions as stated on the packing at all times and not subject to extremes of temperature or humidity.

9. Liabilities

- 9.1 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or under the express terms of the Agreement, or for any indirect, special, contingent or consequential loss or damage (whether for loss of business, profits, revenue, anticipated savings or otherwise) whether arising from negligence, breach of contract or otherwise, costs, expenses or other claims for compensation whatsoever which arise out of or in connection with the supply of the Products or their use or resale by the Customer, and the entire liability of the Company under or in connection with this Agreement shall not exceed the Price of the Order, except as otherwise expressly provided.
- 9.2 The Customer shall indemnify the Company and keep the Company fully and effectively indemnified against any loss or damage to any property or injury or death of any person caused by any negligent act or omission or willful misconduct of the Customer, its employees, agents or subcontractors.
- 9.3 The Company shall not be under any liability in respect of any claim made against the Customer by any third party, and the Customer shall fully and effectively indemnify the Company against any claims brought by any third party relating to the Products.

10. Intellectual Property Rights

- 10.1 Intellectual property rights, including but not limited to copyright, patent, design right or trademark, in any Products belonging to the Company or any other items supplied pursuant to any Order remain the property of the Company or its licensors.

11. Confidentiality

- 11.1 The parties agree not to use or to disclose to any third party any confidential information, trade secret or methods of working obtained from the other pursuant to this Agreement.

12. Termination

- 12.1 The Company may by written notice to the Customer cancel any Order and/or terminate this Agreement forthwith if the Customer is in breach of any of its obligations and fails to remedy such breach within fourteen (14) days of the Company's written demand.
- 12.2 Either party may by written notice terminate this Agreement forthwith at any time without any liability to pay compensation therefore if:
- (i) the other party shall have a Receiver or Administrator appointed over the whole or any substantial part of its assets;
- (ii) any order is made or resolution passed for the winding up of the other party (except for the purposes of amalgamation or reconstruction and in such matter that the legal entity resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that party under this agreement;
- (iii) the other party becomes insolvent, commits an act of bankruptcy or enters into any composition or arrangement with its creditors or seizes or threatens to seize to carry on business or any thing analogous to any of the foregoing under the law or any jurisdiction occurs in relation to that party.
- 12.3 Termination will not discharge either party from the performance of any obligation hereunder from payment of any sums due or becoming due by reason of the termination.
- 12.4 In the event of termination by the Company for whatever reason, it shall be entitled to enter any premises of the Customer and recover any property which the Customer has no contractual right to retain and the Customer hereby irrevocably licenses the Company, its employees, agents and representatives to enter any such premises for that purpose.

13. Force Majeure

- The Company shall not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay or the failure to perform its obligations if that delay or failure is caused by circumstances beyond its control, including, but not limited to, acts of God, industrial disputes, inability to obtain any necessary license or consent, material shortages or delays by suppliers.

14. Notice

- Any notices hereunder shall be in writing addressed to the parties at their respective addresses set forth on the Order or such other address as may be notified from time to time by either party to the other by any notice so given shall be deemed to have been given on the second day after posting if it is sent by first class post, on the date of transmission in the case of a facsimile, telex or electronic mail, or on the date of delivery if delivered by hand.

15. Assignment

- This Agreement is personal to the Customer and may not be assigned or transferred without the written consent of the Company.

16. Legal Construction

- These Terms and Conditions shall in all respects be construed in conformity with the governed by English Law and, unless otherwise agreed and arranged, be subject to the jurisdiction of the English Courts.

17. Waiver

- No forbearance, delay or indulgence by the Company shall prejudice or restrict its rights nor shall any waiver operate as a waiver of any subsequent breach and no right or remedy conferred upon the Company is exclusive of any other right, power or remedy available to it and each such right, power or remedy shall be cumulative.

18. Entire Agreement

- 18.1 This agreement supersedes all prior representations, arrangements and understandings between the parties and constitutes the entire agreement between the parties. Any amendment to this Agreement must be in writing and signed by an Authorised representative of each party.
- 18.2 The Customer acknowledges that in entering into this Agreement it does not so on the basis of any prior representation except as specifically contained in this Agreement.

19. Partial Invalidity

- If any of the provisions of this Agreement prove to be legally invalid this shall not affect the validity of the remaining provisions hereof which shall continue in full force and effect between the parties hereto.