

TERMS AND CONDITIONS OF SALE

1. GENERAL

The **Seller** is Sunset (UK) Limited, being a private limited company incorporated in England and Wales with registration number 03729563 and whose registered office is 70 Alston Drive, Bradwell Abbey, Milton Keynes, MK13 9HG.

The **Buyer** is any person, firm or company who buys or has agreed to buy Goods from the Seller. The Buyer will be classed as a business customer unless the Buyer indicates in writing to the Seller that the Goods supplied by the Seller will not be used or resold by the Buyer in the ordinary course of its business.

The **Conditions** means the Seller's terms and conditions of sale set out herein. The Seller's terms and conditions of sale set out herein are the standard terms and conditions under which the Seller supplies any Goods and shall, unless otherwise expressly stated in writing, apply to, and shall be deemed to be incorporated into, all contracts for the supply of the Goods by the Seller.

The **Contract** means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with the Conditions.

Goods means any goods (or any part of them) set out in the Order and provided by the Seller in accordance with the Conditions.

The **Order** is an offer from the Buyer to buy the Goods on the Conditions as set out in the Buyer's purchase order form or in the Buyer's written acceptance of the Seller's quotation, as the case may be.

Price means the price payable by the Buyer in respect of the Goods, being the price quoted by the Seller in respect of the Goods or as otherwise provided for by the Conditions.

The Order constitutes an offer by the Buyer to purchase the Goods in accordance with the Conditions. The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order or delivers the Goods, at which point the Contract shall come into existence. The Contract constitutes the entire agreement between the parties and the Buyer acknowledges that it has not relied on anything which is not set out in the Contract.

The Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Conditions supersede any previous terms and conditions of sale of the Seller. Any variations of the Conditions must be confirmed in writing by a director of the Seller and will not otherwise be valid. Other employees or agents of the Seller do not have the authority to vary or waive any of the terms and conditions within the Conditions in whole or in part. Any waiver by the Seller of the Conditions on any occasion shall merely act as a waiver on that occasion, and shall not affect the Seller's right to enforce the Conditions on any further occasion. No terms and conditions stipulated by the Buyer shall have effect unless otherwise agreed in writing by the Seller.

2. PRICES

Unless otherwise stated any Price is:

- (a) exclusive of value added tax and any other taxes and duties;
- (b) exclusive of carriage, packaging and insurance; and
- (c) exclusive of any release certificates.

The Seller shall charge extra in respect of these items and the Buyer shall pay the Seller such additional amounts. Prices to the Buyer are subject to change without notice after the date of the Seller's acceptance of the Buyer's Order and before delivery where the Seller has incurred increased costs beyond its control due to currency exchange rate change, import duty change, increased prices from supplier or surcharges. Where agreed call-offs are not adhered to, the Seller reserves the right to amend the Price structure in accordance with quantities delivered. In any event the Seller retains the right to invoice at the Price ruling at the time of delivery. The Seller reserves the right to amend Prices to correct errors or omissions.

3. PAYMENT

Time of payment is of the essence and the Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding. Payment is strictly net cash with Order unless a credit account has been established with the Seller. Where the Seller has agreed to open a credit account, payment must be made in full strictly 30 days from the date of invoice or earlier if otherwise agreed. Where payment is not made in accordance with the terms above, the Buyer shall pay statutory interest on any account calculated at 8% above the Bank of England base rate for the time being in force calculated on a daily basis. The Seller reserves the right to suspend deliveries where payment is not received in accordance with these Conditions. The Seller reserves the right at the Seller's complete discretion to refuse to establish a credit account for any Buyer or to refuse credit to any Buyer notwithstanding that a credit account may already have been established, and to withdraw credit account facilities. Without prejudice to the Seller's other rights, a minimum charge of £50 will be levied on all returned cheques.

4. DELIVERY

- (a) All despatch dates are estimated, are not guaranteed and do not form a term of the Contract, and the time of delivery is not of the essence. Whilst every endeavour will be made to comply with these dates, the Seller shall have no liability whatsoever for delay in despatch or delivery, or for any loss occasioned thereby. Late delivery does not entitle the Buyer to cancel the Order. Unless otherwise agreed in writing, the Seller shall be entitled to make partial deliveries by instalments and the Conditions shall apply to each partial delivery.
- (b) At the time of delivery the Buyer must check that the quantity of Goods matches the quantity set out on the proof of delivery (**POD**) and that the exterior of the Goods are in good condition. The Buyer must then indicate this on the POD and sign the POD accordingly. If an over shipment of the Goods has occurred the Buyer must also notify the Seller as soon as possible and in any event within 5 working days of the delivery. The Buyer must not sign the POD "unchecked" or "unexamined" or any such similar wording.
- (c) A signed POD by or on behalf of the Buyer shall be conclusive evidence of delivery and (except to the extent that any damage or discrepancy is noted on the POD) that it was received in good order and condition and accordingly no claims shall be brought in respect of the delivery claiming the contrary.
- (d) The Buyer must inspect the Goods immediately after delivery is complete. If any Goods are damaged, incorrect or not delivered, the Buyer must notify the Seller within 2 working days of the delivery or expected delivery. For the avoidance of doubt, the Buyer is still required to notify the Seller as set out in this clause notwithstanding anything noted by the Buyer on the POD. If a POD is required, this must be requested within 14 days of the date of the invoice.

5. RISK

- (a) Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery of the Goods.
- (b) Delivery of the Goods shall be deemed to take place at the time the same are posted by the Seller in a package addressed to the Buyer, placed in the hands of any delivery agent or service or, if the Buyer collects the Goods, when the Seller notifies the Buyer that they are available for collection.

6. OWNERSHIP

Equitable and beneficial ownership of the Goods will not pass from the Seller to the Buyer until the Buyer has made payment in full thereof for the Goods (and any other monies owing to the Seller). Until such time as ownership of the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee. If payment is not made in accordance with the Conditions, the Seller shall have the right (without prejudice to the obligation of the Buyer to purchase the Goods, and to any other remedy that may be available to the Seller) to retake possession of Goods not fully paid for, and to go upon any premises occupied by the Buyer for the purposes of retaking possession of the Goods.

If any one of the events referred to below happens, notice thereof is to be given immediately to the Seller by the Buyer. Furthermore, all Goods which are the property of the Seller pursuant to the provisions of this clause 6 of the Conditions and which are in the possession of the Buyer shall be delivered immediately to the Seller. Without prejudice to the Buyer's duty to make delivery as aforesaid, the Seller upon receiving notice from whatever source of the happening of any one of the said events, shall also have the right during normal business hours to enter any premises occupied by the Buyer to take possession of the Goods.

The events referred to above are:

- (a) any notice to the Buyer that a receiver or manager is to be or has been appointed over its assets;
- (b) any notice to the Buyer that a petition to wind-up the Buyer or for an administration order in respect of the Buyer is to be or has been presented or any notice of a resolution to wind-up the Buyer has been made (save for the purposes of a solvent reconstruction or amalgamation);

- (c) a decision by the Buyer that the Buyer intends to make an arrangement with its creditors; and
- (d) any act of bankruptcy as defined by section 1 of the Bankruptcy Act 1914 where the Buyer is an individual.

The Buyer shall not create or allow to be created any right in the Goods in favour of any third party. If the Buyer breaches any of the provisions of this sub-paragraph the value and the outstanding amounts on the Order shall immediately, and notwithstanding any contractual term to the contrary, become payable.

Until payment in full is received by the Seller, the Buyer will not use or dispose of the Goods in question except in the ordinary course of its business, but will store the same taking all necessary measures for the protection of the Goods including maintaining adequate insurance therefor.

7. CANCELLATIONS AND RE-SCHEDULES

Requests to cancel or re-schedule Orders must be made in writing to the Seller. The Seller is under no obligation to accept such cancellations or reschedules. Without prejudice, the Seller reserves the right to make a charge on the Buyer to recover costs and loss of profit incurred by the Seller due to such a cancellation or re-schedule as a condition of accepting such a cancellation or re-schedule.

8. WARRANTY

- (a) The Seller will endeavour to ensure that the Buyer receives the benefit of any guarantee or warranty issued by the manufacturer or supplier of the Goods.
- (b) The Buyer is responsible for instructing itself on the terms of such guarantee or warranty and ensuring that any conditions are fully complied with.
- (c) In cases where no guarantee or warranty is offered by the manufacturer or supplier, or any act of the Seller has invalidated such guarantee or warranty, if the Buyer shall notify the Seller in writing within 30 days from the date of delivery that the Goods supplied by the Seller were defective, the Seller will replace or repair at its discretion the Goods proved to be defective. Defective means any defect in physical workmanship of the Goods and specifically to the recording media in the case of software. However, such remedy is only available to the Buyer provided that the Goods shall be brought back to the Seller's premises at the expense of the Buyer. The Conditions shall apply to any replaced or repaired Goods supplied by the Seller.
- (d) The Buyer must ensure that the Goods are serviced, maintained and used properly and in accordance with the Seller's recommendations (and any guarantee or warranty) and are not fitted or used with any parts, accessories or ancillary equipment other than those recommended by the Seller or stated by the Seller (or within any guarantee or warranty) to be suitable.
- (e) During the warranty period set out in clause 8(c) of the Conditions above, no attempt must be made by the Buyer or any third party to remedy any defect or to dismantle or otherwise tamper in any way with the Goods except in accordance with specific instructions, directions and/or requests of the Seller.

9. SOFTWARE

All software, including related documentation, is supplied under licence of the applicable proprietary owner. Title or ownership to software does not transfer to the Buyer under any circumstances. It is the sole responsibility of the Buyer to comply with any terms and conditions of licence attaching to software supplied and delivered by the Seller and the Buyer is hereby notified that failure to comply with such terms and conditions could result in the Buyer being refused a software licence or having the same revoked by the proprietary owner.

10. LIMITATIONS OF LIABILITY

The Buyer's attention is drawn in particular to the provisions of this clause 10.

Subject to the provisions of the Conditions and to section 6 of the Unfair Contract Terms Act 1977 and with the exception of those implied by section 12 of the Sale of Goods Act 1979, all conditions and warranties whether express or implied by statute (including without limitation sections 13 to 15 of the Sale of Goods Act 1979) or common law and whether oral or written are (unless specifically confirmed by the Seller in writing) excluded and negated from the Contract to the fullest extent permitted by law.

Except in respect of death or personal injury caused by the Seller's negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability, the Seller's total liability to the Buyer (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) shall not in any event exceed the Price of the Goods in respect of which a claim is made, nor include any indirect or consequential loss or damage howsoever arising provided always that this sub-paragraph shall not apply to the extent that the Buyer requires to be covered by insurance and pays the Seller the amount of the insurance premium (to be determined by the Seller) required for such cover (in which case the Seller's liability shall not in any event exceed the amount recoverable under the insurance).

In cases where the Seller is asked to recommend Goods to meet the Buyer's requirements the Seller does not warrant that purchase of the Goods will satisfy the Buyer's requirements. All recommendations of Goods by the Seller are therefore estimates only and the Seller can accept no responsibility if any Goods supplied fail to meet the Buyer's requirements or to achieve any particular level of performance.

11. FORCE MAJEURE

The Seller will not be liable to the Buyer or deemed to be in breach of the Contract because of any delay or non-performance directly or indirectly due to any cause beyond the Seller's reasonable control including without limitation lack of adequate instructions from the Buyer, Governmental regulations or requirements, Acts of God, unavailability of materials, work stoppages, strikes, slowdowns, boycotts or other industrial action, and in such case the Seller may wholly or partially suspend shipment of Goods.

12. WAIVER

A waiver of any right or remedy under the Contract or law is only effective if given in writing. The failure on the part of the Seller to exercise or enforce any rights conferred by the Conditions shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

13. SEVERABILITY

The invalidity of the whole or any part of any of the Conditions shall not affect the validity of the remaining part of the particular term or condition of the Conditions or the other provisions of the Conditions.

If any provision or part-provision of the Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

If any provision or part-provision of the Conditions is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14. ANTI-CORRUPTION

The Buyer warrants and represents that it shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010 and that neither it nor, if applicable, any of its officers, employees or any person acting on its behalf has offered, given or agreed to give, or will offer, give or agree to give, to any person any inducement or reward (or anything which might be considered to be an inducement or reward) in connection with the Seller entering into the Contract.

15. LAW

The Conditions and the Contract, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by English Law and the English courts shall have exclusive jurisdiction in relation thereto.

Signed by: _____
Name: _____
Position: _____
Firm/Company: _____
Date: _____