

# **ASPER SYSTEMS LIMITED**

**Company Number SC265021**

**Dated 17th March 2004**

## **Standard Terms and Conditions of Sale**

### **1. General**

- a) "the Seller" means Asper Systems Limited.
- b) "the Buyer" means any individual, partnership or company who places an order with the Seller.
- c) "the Agreement" means these standard terms and conditions of Sale which may not be varied or assigned by the Buyer without the prior written consent of the Seller.
- d) This Agreement supersedes any previous terms or conditions issued and together with the price, quantity and delivery details stated in the Seller's invoice and/or order acknowledgement form the entire agreement between the parties.
- e) "the Order" means the order for the Seller's goods and/or services placed by the Buyer subject to these terms and conditions.
- f) In the case of any inconsistency between these terms and any other terms (whatever their respective dates) these terms shall prevail.
- g) By placing an Order with the Seller, the Buyer shall be deemed to have accepted these terms and the Seller shall not be bound by any Order unless and until the Seller has accepted the Order in writing. The Seller shall be entitled to accept or refuse any Order in its absolute discretion.

### **2. Prices**

- a) Unless otherwise agreed by the Seller in writing, all prices are those ruling at the date of invoice.
- b) All prices quoted are only valid for 30 days and are exclusive of packing, delivery, release certificates and Value Added Tax ("VAT"). Packing, delivery and release certificates will be charged at the Seller's current rates. VAT will be added to all costs at the appropriate rate on the Delivery Date.
- c) The Seller shall be entitled, prior to delivery of any goods and/or the performance of any services, to adjust the price to cover: i) increases in the cost to the Seller of materials, labour, taxes or services; ii) additional costs (including loss of profit) incurred as a result of the cancellation, alteration, non acceptance or rescheduling of orders due to the Buyer's instructions or lack of instructions; and iii) increases in the cost to the Seller of importing materials or goods into the UK including but not limited to currency fluctuations.
- d) In the event that the Buyer fails to take delivery of any part of the goods the Seller shall be entitled to increase the price of the goods remaining undelivered to the Seller's standard price or the price ruling on the actual date of delivery.

### **3. WEEE Regulations**

To the extent that the goods supplied hereunder are subject to the provisions of The Waste Electrical and Electronic Equipment Regulations 2006 ("WEEE Regulations"), it is agreed, pursuant to regulation 9(2) of the WEEE Regulations that where the goods to be disposed of are: (i) situated in the UK, the Buyer shall be responsible for the costs of returning the goods to the Seller or its authorised agent for disposal in accordance with the WEEE Regulations; and (ii) not situated in the UK, the Buyer shall be responsible for the costs of collection, treatment, recovery and disposal of the goods supplied hereunder and in either case should the Buyer fail to perform its obligations under the WEEE Regulations as specified in this clause the Buyer agrees to indemnify the Seller against any and all claims, actions, liabilities, losses, damages, costs and expenses which may be incurred by the Seller in complying with the WEEE Regulations in respect of such goods supplied hereunder.

### **4. Rescheduling or Cancellation of orders**

- a) Should the Buyer wish to reschedule any Order accepted by the Seller, such rescheduling will be entirely at the discretion of the Seller and in any event will only be considered by the Seller if the following procedure is complied with: i) written confirmation of the rescheduling is received by the Seller a minimum of 28 days prior to the original delivery date; and ii) is subject to a maximum reschedule period of three months from the date of placing of the Order by the Buyer.
- b) Any Order accepted by the Seller is non-cancellable by the Buyer without the prior written consent of the Seller. If the Seller consents to the cancellation of such an Order or part thereof the Seller is entitled to charge the Buyer a cancellation fee of 20% of the original total Order price.

### **5. Returned Goods**

Except under the warranty contained in Clause 11, no returns may be made without the prior written consent of the Seller and such goods must be returned to the Seller in their original condition and suitably packaged at the Buyer's risk and expense. Where such goods are returned, the Seller is entitled to charge a re-stocking fee of 20% of the total price of the goods returned.

### **6. Delivery**

- a) The Seller shall use its reasonable endeavours to meet any agreed delivery dates but time of delivery shall not be of the essence.
- b) The address for delivery shall be as stated in the Order or to such other address as may be agreed in writing between the parties.
- c) The Seller shall not be liable for any loss or damage whatsoever (whether direct or indirect) arising from the late delivery of goods or materials or failure by Buyer to take delivery and the Buyer shall not be entitled to treat the contract as repudiated by reason of such late or non delivery.
- d) Goods may be delivered in advance of the quoted delivery date and the Seller shall be entitled to make partial deliveries or deliveries by instalments. Each partial delivery or instalment shall be deemed to constitute a separate contract to which these terms and conditions shall apply.
- e) All risks in the goods shall pass to the Buyer upon delivery.

### **7. Notification of Claims**

No liability will be accepted by the Seller in respect of the services or in respect of damage or shortage of goods unless separate notice in writing is given to the carriers concerned (where goods are concerned) and to the Seller, giving full details, within fourteen days of the date of invoice or the delivery date, whichever is earlier. The Seller shall have no liability in respect of damage or shortages caused by the acts or omissions of the Buyer or of others or by causes beyond the Seller's control.

### **8. Payment**

- a) Payment shall be made by the Buyer in full within 30 days from date of the invoice rendered by the Seller.
- b) The Seller reserves the right to charge interest upon unpaid accounts, to accrue at the rate of 5% above the base rate of the Royal Bank of Scotland (Scotland) on the unpaid debt from the due date of payment.
- c) The Seller is entitled to suspend deliveries or cancel outstanding orders on accounts that are overdue for payment.
- d) A claim or counterclaim shall not entitle the Buyer to withhold payment.

### **9. Transfer of Property**

a) Ownership in any goods shall remain with the Seller until such time as the Buyer has paid in full all that it owes to the Seller. This to include the full cost outstanding of any other goods, contract, delivery or instalment. Until that time the Buyer shall keep the goods as bailee for the Seller in a fiduciary capacity although the Buyer shall be entitled to sell the goods to a third party within the normal carrying out of its business on the condition that it shall account to the Seller for the proceeds of such sale or hold the same on trust for the Seller.

b) The Buyer's right (if any) to keep goods still owned by the Seller shall cease if it commits any available act of bankruptcy or does anything or fails to do anything which would entitle a receiver to take possession or which would entitle any person to present a petition for winding-up.

c) The Buyer agrees that the Seller may for the purpose of recovery of its goods enter the Buyer's premises and repossess them.

d) The Buyer shall be entitled to incorporate the goods into any other product in the normal course of business on the condition that ownership in the new product shall vest in the Seller.

#### **10. Force Majeure**

The Seller shall be relieved of all its obligations under the contract to the extent to which fulfilment thereof is prevented frustrated or impeded as a consequence of any circumstances outside the Seller's control including, but not limited to, industrial action, war, statutes, rules, regulations, orders or requisitions issued by any Government Department or other duly constituted authority or non-availability of raw materials, fuel or energy.

#### **11. Warranty**

a) The Buyer relies on its own skill and judgement and places orders on the basis that the Seller makes no representation(s) as to the suitability of any of the goods supplied for use under any specific conditions. Without prejudice to the generality of the foregoing the Buyer understands that the goods supplied by the Seller have not been designed : (i) for use in life support and/or life monitoring systems and/or devices or articles intended for surgical implant into the body; or (ii) to monitor or control environments or systems where failure or malfunction could lead directly to death or personal injury or severe physical or environmental damage (together known as "High Risk Use") and the Buyer shall indemnify and keep indemnified the Seller from and against all loss and damage or liability whether criminal or civil suffered and legal costs and fees incurred due to such High Risk Use. The Seller specifically disclaims any express or implied warranty of fitness for High Risk Use and strongly recommends that the Buyer insures against all loss or damage which the Buyer may suffer as a result of the failure of the goods to operate in a High Risk Use situation.

b) The Seller warrants that it will make good by replacement or (at its option) by repair defects in the goods supplied which arise solely out of faulty design (other than a design made, furnished or specified by the Buyer) or the use of faulty materials or bad workmanship on the Seller's part and which are notified to the Seller within 12 months from the delivery date, provided that: i) the Buyer shall have installed and used the goods properly; ii) the Buyer shall have properly maintained and serviced the goods in accordance with any recommendations; and iii) the goods are returned unmodified, undamaged and suitably packaged to the Seller.

c) The provisions of clause 11.b) above shall also apply to the repaired or replacement goods, based upon the original Delivery Date.

d) After the expiration of 12 months from the Delivery Date the Seller shall not be liable for breach of any terms implied by the *Sale and Supply of Goods Act 1994* relating to description, quality, fitness for purpose or for any other defects in the goods, or for the performance of the services.

#### **12. Liability**

a) Subject to clause 12(b), the Seller's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed 100% of the price of the goods supplied or services provided hereunder in respect of which a claim arises.

b) The Seller shall not be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by breach of contract, tort (including negligence) or otherwise, whether or not such loss or damage is foreseeable, foreseen or known. Without prejudice to the generality of the foregoing, the Buyer specifically agrees that any such loss or damage arising from High Risk Use is deemed indirect loss or damage and as such excluded hereunder provided that nothing in this Agreement shall exclude or in any way limit the Seller's liability for death or personal injury caused by the Seller's negligence.

#### **13. Copyright**

a) The goods comprise or include intellectual property rights of the Seller and the sale of the goods by the Seller and the publication of any information and technical data relating thereto does not imply freedom from patent, copyright, registered design or other industrial or intellectual property rights in respect of any particular application of the goods.

b) The Buyer warrants that the design and specifications supplied by it to the Seller will not involve the infringement of any patent, copyright, registered design or other industrial property right in the manufacture and sale of goods by the Seller.

c) The Buyer accordingly undertakes to indemnify and keep indemnified the Seller against all royalties, claims, actions, demands, proceedings, losses and costs in connection with any infringement or alleged infringement of any patent, copyright, registered design or other industrial property right in the manufacture, sale or application of the goods provided that nothing in this clause shall operate to prejudice the statutory term as to title contained in *section 12 of the Sale of Goods Act 1979*.

#### **14. Sub-Contract**

The Seller reserves the right to sub-contract any part of the performance of the services or the supply of any goods ordered without obtaining the consent of the Buyer.

#### **15. Waiver**

Failure by the Seller to enforce at any time, or for any period, any of the terms of this Agreement shall not be a waiver of them or the right at any time subsequently to enforce any or all of this Agreement.

#### **16. Legal Construction**

a) This Agreement shall be governed by Scottish law and both parties hereby irrevocably submit to the jurisdiction of the Scottish Courts.

b) Where any condition of this Agreement is held to be wholly or partially invalid or unenforceable, then such condition (or the invalid or unenforceable part thereof) shall be treated as severable and the remainder of this Agreement and the remaining part of that condition (if any) shall remain valid and enforceable.

c) A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these terms and conditions.

d) Clause headings are for convenience only and shall not affect the construction of this Agreement.