

Grundig Business Systems (UK) Limited Terms and Conditions of Sale

In these Terms and Conditions of Sale (the „Agreement“), „Customer“ means the entity purchasing Goods pursuant to this Agreement; „Force Majeure Event“ means a cause which is outside Seller's control including, but not limited to, shortages of labour, energy, fuel, machinery or materials, technical failures, war, riot, strike, lawful lockout, any government act, law or regulation including any judicial order or decree, natural disaster, fire flood, earthquake or terrorist act; „Goods“ means the goods or materials to be supplied by Seller to Customer through an Order placed under this Agreement; „Seller“ means Grundig Business Systems (UK) Limited; and „Order“ means an order placed by the Customer for the supply of Goods by Seller.

1. OFFER AND ACCEPTANCE

- (1) Seller's offers are non-binding. A contract shall only be deemed to have been made when Seller formally accepts Customer's Order through written confirmation by Seller or if Seller sends or otherwise communicates acceptance of the Order, or otherwise commences work on the Order such as by shipping the Goods.
- (2) Only the terms of this Agreement shall apply to any transactions and Orders made with or by the Customer. This Agreement shall also apply to future business transactions with the Customer even in the absence of any express reference to this Agreement. Any terms and conditions proposed by the Customer are expressly rejected and shall not apply. Any variations or amendments to this Agreement shall only take effect if confirmed by Seller in writing.
- (3) Seller reserves the right to make minor technical and/or design changes to the Goods to improve them after an Order has been confirmed, without prior notification to the Customer.

2. PRICE

- (1) The prices valid at the date of conclusion of this Agreement shall apply to each Order. Prices may be varied from time to time. Unless indicated otherwise, the prices are in Pounds Sterling and are exclusive of value-added tax which shall be payable by Customer. Customer shall reimburse Seller for insurance and transportation costs if such have been disbursed by Seller.
- (2) The price indicated on an Order includes the costs for basic packaging and shipping. Customer may request special arrangements for packaging (such as firmly padded carton for delivery by rail) or type of delivery (eg. via Securicor) and any extra costs associated therewith shall be charged to the Customer separately.
- (3) Prices for spare parts shall be ex works plus packaging, handling fee and freight charges.
- (4) If after conclusion of an Order a change occurs on the part of the Customer which impairs its creditworthiness or borrowing powers, or if Seller learns of any impairment of the Customer's creditworthiness or borrowing powers that occurred before conclusion of an Order, Seller shall, at its option, be entitled to demand provision of advance payment. In any case Seller shall be entitled to make further deliveries conditional on the prior payment of outstanding liabilities. Seller is also entitled to rescind any open Order under this Agreement in whole or in part after on reasonable notice.

3. DELIVERY AND INSTALLATION

- (1) Delivery dates are estimates and non-binding. Seller shall not be liable for any delay, damage, loss or expense incurred by the Customer whether arising directly or indirectly out of any failure of Seller to meet estimated delivery dates.
- (2) Seller shall have the right to deliver Goods in instalments, unless the Customer has notified Seller in writing ten (10) days prior to the agreed estimated delivery date that it does not wish to receive delivery by instalments.
- (3) If Seller, or its sub-suppliers, fails to perform any obligation under this Agreement and this is due to a Force Majeure Event or any other event beyond Seller's control, then Seller shall not be liable in any way for any loss, damage or expense arising directly or indirectly from such circumstance. Seller shall notify Customer of any Force Majeure Event affecting its performance as soon as possible.
- (4) If a Force Majeure Event subsists for a period of three (3) months or longer, either party may cancel an Order affected by such Force Majeure Event immediately by written notice to the other party.
- (5) Transportation of the Goods shall be at the Customer's risk; this shall not apply to the return of Goods in the context of any repair or replacement deliveries made pursuant to this Agreement in which case, risk shall not pass to the Customer until delivery.
- (6) We recommend that the Goods be installed by trained specialist staff.

4. PAYMENT TERMS

- (1) Unless otherwise agreed in writing, Seller's invoices are due immediately and payable without any discount or deduction by way of set-off or counter-claim thirty (30) days after the invoice date. Any late payment, or default of payment, in respect of any invoice shall be charged interest at the applicable rate of „statutory interest“ within the meaning of section 1 of the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be charged on the total value of the monies outstanding from the date payment was due until such time as full payment is made.
- (2) Seller reserves the right to withhold delivery of Goods, including orders of further Goods, if payment has not been made in full in accordance with this Agreement for any Order placed by Customer.

5. TITLE

- (1) Property in the Goods shall pass to Customer on receipt by Seller in full of:
 - (a) the price of the Goods; and
 - (b) all other sums due from Customer under this Agreement provided that all sums due from Customer at the time of delivery under any other Orders have been settled in full.
- (2) If Seller has not received in full all sums due to it in respect of the Goods in accordance with Clause 5.1, it shall reserve title in such Goods until full payment is effected (the „Reserved Goods“).
- (3) If the Customer is subject to any of the events specified in Clause 8, the Customer's right to possession of the Reserved Goods shall terminate immediately and Customer shall provide Seller, at Seller's request, with an inventory of all Reserved Goods in its possession.
- (4) The Customer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.
- (5) Until ownership of the Goods has passed to the Customer, the Customer shall:
 - (a) hold the Reserved Goods as a fiduciary for Seller (in which full title to the Reserved Goods shall remain);
 - (b) store the Reserved Goods at no cost to Seller separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Seller's property;
 - (c) not pledge or allow any lien, charge or other interest to arise over the Reserved Goods or their documents of title;
 - (d) notify Seller promptly if Reserved Goods are attached by third parties and Customer shall indicate Seller's reservation of title to such third party. All costs incurred by Seller in dealing with interference of third parties with Reserved Goods, notably attempts at seizure, shall be borne by the Customer to the extent they are not recoverable from third parties.
 - (e) not destroy, deface or obscure any identifying mark or packaging on or relating to the Reserved Goods; and
 - (f) maintain the Reserved Goods in satisfactory condition insured on Seller's behalf for their full price against all risks to the reasonable satisfaction of Seller, and will whenever requested by Seller produce a copy of the policy of insurance.
- (6) Customer may resell the Reserved Goods solely on the following conditions:
 - (a) any sale will be effected in the ordinary course of the Customer's business at full market value and the Customer will account to the Seller accordingly;
 - (b) the Reserved Goods will be invoiced separately from the goods of other suppliers.
 - (7) The Customer may not enter into instalment credit agreements with financial institutions with respect to the Reserved Goods except with Seller's prior written consent. The assignment of claims shall only be permissible if effected by way of non-recourse factoring and notified to Seller in advance in which case the factoring proceeds must exceed the value of Seller's secured claim. Seller's claims shall fall due for payment immediately when the factoring proceeds are credited to the Customer's account.
 - (8) If the Customer resells Reserved Goods, the Customer shall assign any claims arising against the purchaser upon sale together with all ancillary rights (reservation of title, collateral, bills of exchange, etc.) to Seller in full. Upon Seller's demand Customer shall provide Seller with a list of all such claims stating the debtor's name and address and the amount of the claim. If and to the extent that the claims assigned to Seller are not asserted by Seller, the Customer shall be entitled to collect the same on Seller's behalf and exercise the ancillary rights. The Customer's collection authority and its entitlement to exercise ancillary rights are revocable for good cause, notably in the event of material deterioration of its financial situation. They shall irrevocably extinguish if the Customer discontinues its payments, judicial or extrajudicial insolvency proceedings are filed against it or the opening of such proceedings against it are rejected for lack of assets.

6. WARRANTY

- (1) Goods are sold to the Customer and are subject to a warranty period of two (2) years (the „Warranty Period“). The Warranty Period shall commence upon delivery of the Goods to the Customer.
- (2) The Customer shall, within seven (7) days of receipt of each delivery of Goods, notify the Seller in writing of any defect in the Goods delivered which causes them not to be in accordance with the Agreement and which should be apparent on reasonable inspection.
- (3) If the Customer shall fail to give such notice then the Goods shall be deemed to have been irrevocably and unconditionally accepted as being completely satisfactory.
- (4) Defective analogue Goods may be returned to the Seller or its authorized national service center and at its discretion, provided the analogue Goods have been operated under normal conditions, and the defect has not arisen as a result of bad workmanship or a modification by the Customer, such analogue Goods shall either be repaired, replaced, or credited. All items must be returned to the Seller in original packaging together with all documentation and accessories. Failure to do so will result in credit, repair or replacement being refused. The Customer shall not be entitled where the analogue Goods are to be delivered by instalments to cancel any undelivered balance without the prior written consent of the Seller. Any Goods or parts of Goods replaced shall become the property of the Seller.

- (5) Where the Goods delivered are digital devices which are proved to the reasonable satisfaction of the Seller to not comply with an Order or the Agreement within the Warranty Period due to defects in material or workmanship, the Seller shall repair, or at its option replace such digital devices at the Seller's cost. The Customer shall bear the cost of transporting any such digital devices to and/or from the Seller's premises for the purpose of repair. The Seller's obligation will not apply where:
 - (a) the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair, or the Customer has opened up the digital devices in any way;
 - (b) the Goods have been improperly installed or connected; (c) any maintenance requirements relating to the Goods have not been complied with; or (d) any instructions as to storage of the Goods have not been complied with in all respects.
 - (6) Any Goods in respect of which the Customer alleges that they are not in accordance with this Agreement or their Order shall be:
 - (a) returned to the Seller at Seller's request; or
 - (b) preserved by the Customer intact as delivered at his risk for a period of thirty (30) working days from notification of the claim within which time the Seller or its agents shall have the right to attend at the Customer's premises to investigate the complaint and inspect the Goods.
- Any breach of this provision shall debar the Customer from pursuing a claim in this regard.
- (7) If any Goods are returned by the Customer to the Seller without authority from the Seller they shall be deemed to be the sole and entire responsibility of the Customer and the Customer will not be entitled to make any claim in respect of any alleged defect, loss, shortage or damage to the Goods.
 - (8) In the event of repairs being carried out by the Seller, the Seller warrants the repaired Goods for twelve (12) months from the date of repair against faulty workmanship or materials. This warranty applies only to the fault(s) that were corrected during the repair.
 - (9) Estimates or repair costs will not be given unless expressly requested in writing by the Customer. In the event of the estimate being refused a charge will be made for the work carried out in obtaining the estimate. A charge may also be made for collection, Packing and Delivery. In accordance with the Torts (Interference with Goods Act) 1977 the Seller will hold uncollected repaired Goods for a maximum of three (3) months from the date of notification to the Customer (or owner) that they are available for collection. After this period the Goods will be sold to offset the repair/storage costs incurred by the Seller.

7. LIMITATION OF LIABILITY (General limitations)

In no event shall Seller be liable for any special, collateral, indirect, punitive, incidental or consequential loss or damage in connection with or arising out of this Agreement or the use of the Goods provided hereunder, regardless of whether Seller has been advised of the possibility of such loss or damage. Excluded damages include, but are not limited to, cost of removal or reinstallation, ancillary costs to the procurement of substitute goods or services, labour costs, loss of goodwill, loss of profits, loss of savings, or loss of use or data or business interruption. No suit or action shall be brought against Seller more than one (1) year after the related cause of action has occurred.

7.1 Specific limitations

- (1) In no event shall Seller's aggregate liability from any lawsuit, claim, warranty, or indemnity arising out of or in connection with this Agreement or any use of any Goods provided hereunder, exceed the total amount paid to Seller for the particular Goods sold under Orders made pursuant to this Agreement with respect to which losses or damages are claimed. The existence of more than one claim against the particular Goods sold to Customer under this Agreement shall not enlarge or extend this limit.
- (2) Customer understands and agrees that the foregoing liability limitations are reasonable and reflected in the price of the Goods and that in the absence of such limitations the material and economic terms of this Agreement would be substantially different.
- (3) The aforementioned liability restrictions shall also apply in the event of any claims for damages on the part of the Customer against Seller employees or authorised agents.
- (4) Notwithstanding the generality of the foregoing, neither party seeks to limit their liability for fraud, death or personal injury caused by its negligence or that of its agents, employees or subcontractors.

8. TERMINATION

- The Seller shall, at its option, be entitled by notice to terminate this Agreement (and all Orders made under it) forthwith and recover all expenses, losses and damage resulting to Seller including (but without limitation to) loss of profit or other consequential loss if Customer:
- (a) is unable to pay its debts within the meaning of sections 123(1) or 123(2) of the Insolvency Act 1986; (b) becomes insolvent; (c) is the subject of an order made or a resolution passed for its administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction);
 - (d) has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets;
 - (e) enters into or proposes any composition or arrangement with its creditors generally; or
 - (f) is the subject of any events or circumstances analogous to the foregoing in any applicable jurisdiction.

9. CONFIDENTIALITY

The Customer shall treat all information and documents received from Seller (e. g. offers, price lists, technical concepts, etc.) as confidential and not disclose them to others except with Seller's prior written consent.

10. ASSIGNMENT

Customer may not assign, transfer or sub contract any benefit or burden to any other party that it has under this Agreement or under any Order entered into pursuant to this Agreement without Seller's prior written consent.

11. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall be deemed to constitute a partnership between the parties, nor constitute either party the agent of the other party for any purposes.

12. GOVERNING LAW

This Agreement is governed by English law and the English Courts shall have exclusive jurisdiction in relation to any disputes arising out of or in connection with this Agreement save that Seller shall retain the right to bring proceedings against the Customer in any other court.

13. SEVERABILITY

If any provision of this Agreement is or becomes illegal, invalid or unenforceable, then such provision or part thereof shall be severed from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

14. WAIVER

Seller's inaction in relation to any breach of any term of this Agreement by Customer shall not be deemed a waiver of Seller's rights and Seller shall be entitled to exercise its rights and remedies in the event of any subsequent breach.

15. SURVIVAL OF PROVISIONS

Termination of this Agreement, for whatever reason, shall not affect any of its provisions which are intended to continue to have effect after it has come to an end.

16. RIGHTS OF THIRD PARTIES

This Agreement is not intended to confer any benefit on, and its terms shall not be enforceable by, any third party. For the avoidance of doubt, the Contracts (Rights of Third Parties) Act 1999 shall not apply.

17. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior understandings or arrangements (both oral and written) relating to the subject matter hereof. This Agreement shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any Order or other written document not expressly incorporated herein. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.