

## 1. Definitions and terms of contract.

(a) In these Conditions the following definitions apply:

**Buyer:** means the person or firm who purchases Goods from the Seller;

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with the terms of these Conditions;

**Contract:** the contract between the Buyer and the Seller for the sale and purchase of the Goods in accordance with these Conditions;

**Goods:** the goods (or any part of them) set out in the Order;

**Order:** the Buyer's order for the Goods; and

**Seller:** Pago Limited.

(b) All Orders from the Buyer shall be treated by the Seller as an offer to purchase, on these Conditions, Goods (which term shall include complete machines and any parts therefore) and no Contract shall come into existence until such Order has been accepted by the Seller in writing. The Buyer is responsible for ensuring that the terms of the Buyer's Order are complete and accurate.

(c) No amendment of, or addition to, these conditions shall be binding unless accepted by both the Seller and the Buyer in writing and no amendment or addition to any Order which has been accepted by the Seller shall be effective unless accepted by the Seller in writing.

(d) Unless previously accepted by the Seller in writing, no terms, conditions or warranties put forward by the Buyer shall form part of any Contract between the Buyer and the Seller.

(e) The Buyer acknowledges that in entering into a Contract with the Seller it does not rely on any representations or statements which may have been made by the Seller or its servants or agents and all such representations or statements are hereby excluded save as may be expressly incorporated in these Conditions or confirmed in writing.

## 2. Descriptions and Specifications.

Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are provided for the sole purpose of giving an approximate idea of the Goods described in them and the Seller reserves the right to alter at its discretion any particulars of any Goods which appear or are stated in any samples, drawings, descriptive matter or advertising relating to the Goods. Including construction materials, sizes and weights of Goods described in any quotation, literature or advertisement which may include approximations and do not form part of any Contract unless specified therein.

## 3. Intellectual Property.

All intellectual property rights in or arising out of or in connection with the Goods, services, drawings, quotations, illustrations, descriptions, leaflets, samples and models of or relating to any Goods (herein together referred to as "materials") which are supplied by the Seller shall be owned by the Seller and may not be passed on to any third party or be copied or used by the Buyer for the manufacture of any articles. All materials remain the property of the Seller and are returnable to the Seller forthwith on demand.

## 4. Price.

(a) Notwithstanding condition 1 (b), all prices quoted shall remain valid for 30 days unless otherwise stated in writing by the Seller.

(b) The Seller reserves the right to increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to: (i) any factor beyond the control of the Seller (including, but not limited to, foreign exchange fluctuations, increase in taxes and duties, and increases in labour, material and other manufacturing costs); (ii) any request by the Buyer to change the delivery or installation date(s), quantities or type of Goods ordered, or specification of the Goods; or (iii) any delay caused by the instructions or omissions of the Buyer in respect of the Goods or failure of the Buyer to give the Supplier adequate or accurate information or instructions in relation to the Goods.

(c) All prices are on a net ex-works basis and do not include packaging, V.A.T. or other local taxes unless otherwise expressly agreed in writing.

(d) The Seller reserves the right to charge the Buyer an additional amount to cover extra costs and expenses resulting from delay caused by lack of instructions from the Buyer, requests by the Buyer to suspend work and changes by the Buyer to its requirements or specifications.

(e) Quotations shall not be deemed to bind the Seller or form any contractual liability unless and until the customer makes an Order in writing and which Order is accepted by the Seller in accordance with clause 4 (f) hereof.

(f) Orders made by the Buyer to the Seller shall not bind the Seller or form any part of any contractual liability unless and until such Order is accepted in writing in which case these Conditions shall apply.

(g) The Seller reserves the right to revise or alter a quotation before an Order is accepted in the event of any unforeseen rise in the cost to the Seller of manufacture and supply of the Goods.

(h) The Buyer warrants that information supplied to the Seller for the purpose of a quotation is accurate and correct but in the event that the information so supplied proves incorrect or inaccurate or different in practice the Seller reserves the right to revise all costs and prices by way of revised quotation which quotation shall be deemed the only quotation for the purpose of the terms of Contract. In the event that work has commenced on Goods by the Seller on inaccurate or incorrect information proving different in practice supplied by the Buyer, the Seller reserves the right to cease work and notify the Buyer accordingly and the Buyer from the date of such notification shall be liable for all costs, expenses, and other charges incurred by the Seller to that date which sum shall be payable in accordance with the terms of payment hereinafter contained.

(i) The Buyer undertakes to supply free of charge to the Seller such product and materials as may be required by the Seller to set up and operate the Goods during the design, manufacture, assembly and testing of the Goods at the Seller's preferred manufacturing site.

(j) The Buyer warrants that any products and materials supplied are accurate and correct with regard to the agreed project specification and that the required products and materials will be delivered in a timely manner to the Seller's preferred manufacturing site. The Seller reserves the right to recover any costs incurred by the Seller as the result of delays caused by the late arrival of test products and materials.

(k) In the event that the Buyer requests that the Seller should dispose of any goods and materials subsequent to the despatch of the Goods then the Seller reserves the right to charge for any costs incurred as a result of the certified disposal.

## 5. Delivery and Risk.

(a) All delivery dates or periods quoted by the Seller are the Seller's best estimates and time shall not be of the essence in relation thereto. With regard to any printed matter forming part of an Order, unless specifically agreed in writing by the Seller, the Seller shall have the right to deliver +10% of the quantity ordered by the Buyer and the Buyer agrees to purchase on a pro-rated basis.

(b) All risk of loss of or damage to Goods shall pass to the Buyer upon the Seller loading the same onto the vehicle of the Buyer or the Buyer's carrier or, if the Seller agrees to deliver to the Buyer, upon arrival at the Buyer's premises of the vehicle of the Seller or its carrier save where a written acknowledgement states that delivery is to be on a CIF, C&F or FOB basis (those terms bearing the meaning set out in 'Incoterms 1980') and subject as provided below.

(c) (i) In the case of failure to deliver by the estimated time the Buyer shall not rescind the Contract for this reason unless on or within 14 days after the estimated delivery date the Buyer gives to the Seller notice in writing specifying a reasonable period of not less than 14 days within which the Goods in question are required to be delivered and in any other case of failure to deliver the Buyer shall not rescind the Contract for this reason unless it has given the Seller notice in writing specifying a reasonable period of not less than 14 days within which the Goods are required to be delivered and the Seller fails to deliver within that period.

(ii) No Claim for short delivery or in respect of damage in transit will be accepted by the Seller unless the shortage or damage is noted on the delivery note or in any other case is reported to the Seller and carrier within five working days of delivery and in either such event the sole responsibility of the Seller shall be within a reasonable period to make up the shortfall or to repair or replace the damaged Goods.

(d) Save as set out in paragraph (c) above, the Seller shall have no liability whatsoever in respect of non-delivery, short delivery, late delivery or damage in transit.

(e) Where Goods are to be delivered in instalments and the Seller fails to deliver anyone or more instalments in accordance with the terms of the Contract, or the Buyer claims that the Goods in anyone or more instalments have not been delivered in accordance with the terms of the Contract, the Buyer shall not be entitled to treat the Contract as a whole as repudiated.

(f) The Buyer shall be responsible for the obtaining all necessary licences and permissions for the import of the Goods into the country of destination.

(g) The Buyer will be responsible for all costs or charges associated with delivery to the designated site and the Seller accepts no liability for the carriage of the Goods whether the same was undertaken by the Seller or its appointed carrier of choice. At delivery, the risk passes to the Buyer albeit the Goods remain the property of the Seller under the terms of condition 7 (a).

## 6. Installation.

The Seller will undertake delivery of the Goods on the specified date which will be notified to the customer within 7 days of the intended date of installation. Installation will be subject to the following conditions:

(a) a charge for labour, materials, or other incidental expenses, as set out in the rate schedule of the Seller which the Seller reserves the right to alter at any time;

(b) where requested by the Buyer a quotation will be given for installation, and/or a preventative maintenance contract, such quotation being subject to the provisions contained in clause 4 of these Conditions and paragraph (a) of this condition 6;

(c) the Buyer will ensure that the Seller has access to the site and all necessary facilities for the installation, fitting and movement of Goods, testing and commissioning or other facilities as specific by the Seller and as reasonably required by them;

(d) the Seller will not be responsible for making good other works or other trades which are not the Seller's responsibility;

(e) the Buyer will provide adequate insurance cover for the Seller on site and will in any event indemnify the Seller against any costs, claims, demands or other expenses incurred by the Seller as a result of the negligence or other actions of the Buyer, its agents or employees;

(f) the Buyer shall prepare the Buyer's premises for the installation of the Goods; and

(g) If the Seller's performance of any of its obligations in respect of delivery or installation are prevented or delayed by any act or omission of the Buyer or failure by the Buyer to perform any relevant obligation ("Buyer Default"):

(i) the Seller shall without limiting its other rights or remedies have the right to suspend performance of the installation until the Buyer remedies the Buyer Default;

(ii) the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in these Conditions; and

(iii) the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Customer Default.

## 7. Title.

(a) Goods supplied by the Seller shall remain the property of the Seller until payment in full of all monies owing by the Buyer to the Seller in respect of such Goods has been received by the Seller or any other goods or services that the Seller has supplied to the Buyer in respect of which payment has become due and until such time, the Buyer shall:

(i) hold the Goods on a fiduciary basis as the Seller's bailee;

(ii) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

(iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(iv) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and

(v) notify the Seller if the Buyer becomes subject to any of the events listed in condition 13 (b).

(b) Notwithstanding that property in the Goods has not passed to the Buyer, the Buyer shall be entitled to use the same in the ordinary course of its business and to resell the same provided always that the proceeds of any such resale or, if less, such part of the proceeds as is equal to the amount of the Seller's invoice shall be held on trust by the Buyer for the Seller until such time as the Seller has received payment in full in respect of all amounts owing by the Buyer to the Seller in respect of such Goods.

(c) Notwithstanding that property in any Goods has not passed to the Buyer, the Seller shall be entitled to sue the Buyer for the price thereof if not paid on the due date.

(d) All Goods property in which has not passed to the Buyer shall be kept insured by the Buyer for no less than the invoice value thereof and any proceeds of such insurance shall be held on trust for the Seller.

(e) The Seller shall be entitled at any time to take possession of the Goods which remain the property of the Seller and the Buyer hereby grants to the Seller, its agents and servants a licence to enter upon any premises where such Goods are stored for the time being for the purpose of taking possession of the same and agrees to give the Seller such assistance as the Seller may require for such purpose.

## 8. Payment.

(a) The payment terms will be as stated in writing by the Seller. Unless agreed by the Seller and confirmed in writing by the Seller the following standard payment terms apply: 50% in cleared funds with the Order payable immediately upon receipt of the Seller's invoice, 40% in cleared funds prior to delivery of the Goods payable immediately upon receipt of the Seller's invoice, 10% in cleared funds upon satisfactory completion of a site acceptance test, or within 30 days of delivery to the site (sooner date to apply in all instances). The final invoice payable 30 days from date of invoice. All amounts shall be paid without deduction.

(b) Interest shall be due on all overdue payments both before and after judgement at the rate of 3% above the base rate from time to time of the Seller's bank until such time as payment in full is received by the Seller.

(c) Where any sum payable by the Buyer to the Seller remains unpaid in breach of the terms of paragraphs (a) or (b) above the Seller shall be entitled to suspend delivery of any Goods contracted to be supplied until such time as the said sum has been paid in full together with interest.

(d) The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

(e) The time of payment is of the essence.

## 9. Warranty.

(a) Subject as provided in this condition 9 the Seller warrants that for a period of six months from the date of delivery, the Goods or, in the case of overhauled or reconditioned machines, the new parts therefore shall be free from all defects in workmanship and materials. The foregoing warranty period applies where the Goods are used on a single 8-hour shift per day and any extension of use beyond this will reduce the warranty period pro rata.

(b) The sole obligation of the Seller for breach of condition 9(a) shall be at its option to grant the Buyer a credit at the price at which the Goods were invoiced or to repair or replace the defective Goods with all reasonable despatch provided that in all cases the allegedly defective Goods are promptly returned to the Seller carriage-paid and have been found after examination by the Seller not to have complied with the aforesaid warranty.

(c) The Seller shall have no liability under paragraphs (a) and (b) above to the extent that the defect in the Goods has been caused or contributed to by the Goods not having been stored, used or maintained in a proper manner, the Buyer having performed or permitted to be performed any unauthorised maintenance or repair of or alteration to the Goods, the products being packed by the Goods not corresponding as to shape, weight, size or consistency with those specified by the Buyer before or upon placing the Order with the Seller, the packaging materials, containers and labels used with the Goods not complying with specifications laid

down by the Seller or the Goods having been used otherwise than in a compliance with any specifications laid down by the Seller.

(d) Save as otherwise referred to in writing, guarding shall be provided for all Goods. Upon request by the Buyer, the Seller shall provide further guarding on terms and upon prices to be agreed. No responsibility is accepted by the Seller in relation to compliance with laws and regulations of countries outside the United Kingdom relating to guarding.

(e) Save as set out above, the Seller shall have no liability whatsoever to the Buyer arising out of or in connection with the sale or supply of Goods by the Seller to the Buyer whether for direct, indirect, consequential or any other type of loss and negligence, misrepresentation or other tort of the Seller or by any breach or non-performance by the Seller of the Contract with the Buyer and all conditions, warranties or other terms that are express or implied by law or otherwise inconsistent with this condition 9 are hereby excluded, provided always that nothing in these Conditions shall exclude the liability of the Seller for death or personal injury caused by its negligence.

## 10. Indemnity.

(a) The Buyer shall indemnify the Seller against all claims, damages, costs and expenses for which the Seller may become liable through executing any Order in accordance with the specifications of the Buyer and which may involve the infringement of any patent, copyright, registered design or other intellectual property right.

(b) The Buyer shall indemnify the Seller against all claims, losses, costs and expenses made against or suffered by the Seller arising from or incurred by reason of any loss, injury or damage suffered by a third party and arising out of the operation of the Goods.

## 11. Liability.

Subject to the other terms of this agreement:

(a) The Seller shall not be liable for any loss, damage, cost or expense suffered by the Buyer arising out of defective Goods, its installation, use, loss or faulty delivery of Goods of parts where it is shown that such event has arisen from:

- (i) an act of Force Majeure as defined in condition 12;
- (ii) seizure under legal process;
- (iii) the act or omission of the Buyer, its agent or employees or those for whom the Buyer contracts or of the servants or agents of either;
- (iv) natural deterioration of the equipment;
- (v) inadequate or improper packing of the whole or part of any Goods being returned to the Seller; or
- (vi) insufficient, or incorrect labelling or addressing by the Buyer.

(b) The Seller's liability shall not under any circumstance extend so as to cover marine risk.

(c) The Seller shall not incur liability of any kind in respect of Goods where there has been misrepresentation on the part of the Buyer in respect of the Goods.

(d) No liability shall extend to the Seller in respect to a loss suffered as a result of the Seller following any drawings, descriptions, specifications, or modifications relating to the manufacture or assembly of the Goods which have been supplied or specified by the Buyer

(e) The Seller shall not under any circumstances, be liable in respect of:

- (i) loss or damage to the Goods whatsoever and howsoever arising except as specifically provided for under these Conditions;
- (ii) consequential or economic loss or loss of profits or loss of a particular market;
- (iii) any other loss, damage, cost or expense incurred or suffered by the Buyer whatsoever (whether or not contributed to by negligence of the Seller) save that the Seller shall not be excluded from liability in respect of damages for death or personal injury caused by the Seller's negligence.

(f) The Seller's total liability to the Buyer in respect of all other losses arising in connection with the Contract, whether in contract or tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstance exceed [75% the price of the Goods].

## 12. Force Majeure.

The Seller shall have no liability to the Buyer for any delay or failure in performance to the extent that any such delay or failure arises from causes beyond the control of the Seller including but not limited to fire, floods, acts of God, acts of regulations of any government or supranational authority, war, riot, strike, lock-outs and industrial disputes.

## 13. Customer's Insolvency or Incapacity.

(a) If the Buyer becomes subject to any of the events listed in condition 13 (b), or the Seller reasonably believes that the Buyer is about to become subject to any of them and notified the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any contract between the Seller and the Buyer without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

(b) For the purposes of condition 13 (a) the relevant events are:

- (i) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (ii) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (iii) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (iv) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- (v) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (vi) (being a company) an application is made to the court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
- (vii) (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- (viii) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- (ix) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction which it is subject to has an effect equivalent or similar to any of the events mentioned in condition 13 (b) (i) to (viii) inclusive;
- (x) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (xi) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (xii) (being an individual) the Buyer dies or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

## 14. Termination.

(a) The Seller shall have the right to terminate any agreement based on these Conditions whether in relation to part of the Goods or service or the whole of the Goods or service at any time on giving to the Buyer prior written notice of its intention to do so. Any notices required to be given and any account rendered by the Seller shall be deemed to have been given or tendered if sent by pre-paid letter post addressed to the Buyer or delivered by hand to the Buyer's last known address.

(b) Termination of this Contract, howsoever arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

## 15. Law of the Contract.

(a) The Contract and the Conditions shall in all respects be governed by and construed in accordance with English Law, shall be deemed to have been made in England and the English Courts shall have jurisdiction in connection therewith or in connection with any questions arising hereunder.

## 16 General.

(a) The Seller may at any time assign, transfer, charge or subcontract or deal in any other manner with all or any of its rights under the Contract.

(b) The Buyer may not assign, transfer, charge or subcontract or deal in any other manner with all or any of its rights under the Contract without the Seller's prior written consent.

(c) If any court of competent authority finds that a provision of the Contract (or any part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(d) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

(e) Any notice or other communication given to a party or under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or fax.

(f) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 16(e), if sent by pre-paid first class post or recorded delivery, at 9am on the second business day after posting; if delivered by commercial courier, on the date and time that the courier's delivery receipt is signed; or, if sent by fax one business day after transmission.

(g) A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise a right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(h) A person who is not a party to the Contract shall not have any rights under or in connection with it.

(i) A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or products or its services which the Receiving Party may obtain.

The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents, or subcontractors as need to know it for the purposes of discharging the Receiving Party's obligations under the Contract, and shall ensure that all employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This condition shall survive termination of the Contract.

Colchester, January 2012