

## CONDITIONS OF SALE: ZEBRA WORLDWIDE MACHINERY LIMITED

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 **Definitions:**

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.9.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Delivery Location:** has the meaning given in clause 4.1.

**Force Majeure Event:** has the meaning given to it in clause 13.2.

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

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer.

**Specification:** any description and/or specification for the Goods and/or Services that is supplied in writing by the Supplier to the Customer.

### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**). Once accepted, Orders cannot be cancelled unless agreed in writing by the Supplier and where such cancellation is accepted, the Supplier reserves the right to charge its reasonable losses or expenses incurred.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods and/or Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract nor have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for the period set out in the quotation or if no such validity period is stated, a period of 30 days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3. GOODS

3.1 The Goods are described in the Specification and/or the Order. The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event. The Supplier does not have to accept any changes to the Specification and/or the Order requested by the Customer after it has been accepted but shall use reasonable endeavours, subject to agreement of any necessary revision to price and delivery date, to meet any reasonable request.

**Supplier:** Zebra Worldwide Machinery Limited registered in England and Wales with company number 06982827 whose registered office is at Quadrant Court, 44-45 Calthorpe Road, Edgbaston, Birmingham B15 1TH.

**Third Party Providers:** means third parties who are engaged by the Supplier to provide Services on behalf of the Supplier for which the Supplier may hold the contract for the convenience or benefit of the Customer including but not limited to businesses providing delivery, installation and repair and maintenance services.

**Warranty Period:** means such warranty period (if any) for the Goods as agreed in writing between the parties in the Order or the Supplier's invoice or otherwise.

#### 1.2

#### **Interpretation:**

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** includes email.

3.2 The Customer acknowledges that it has inspected the Goods or has had the opportunity to inspect the Goods prior to delivery and has satisfied itself that the Goods are of satisfactory quality and fit for the Customer's purposes.

#### **4. DELIVERY OF GOODS**

4.1 The Supplier shall deliver and install (if applicable) the Goods (via a Third Party Provider) to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) on or around such delivery date notified to the Customer. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any or failure to deliver the Goods or delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.3 If the Customer fails to take delivery of the Goods within a reasonable period of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods: (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and (b) the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.4 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.5 The Customer must notify the Supplier within 3 Business Days of delivery of any damage to or loss of the Goods otherwise the Customer shall be deemed to have accepted the Goods.

#### **5. QUALITY OF GOODS**

5.1 The Supplier warrants that on delivery and for the Warranty Period (if applicable) the Goods shall:

- (a) conform in all material respects with the Specification and the Order; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business;

the Supplier shall, at its option, repair (via its authorised Third Party Provider) or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or repairs such Goods without the written consent of the Supplier; or
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

#### **6. TITLE AND RISK**

The risk in the Goods shall pass to the Customer on completion of delivery. Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

#### **7. SUPPLY OF SERVICES**

7.1 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

#### **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (e) prepare the Customer's premises for the supply of the Services; and
  - (f) comply with all applicable laws, including health and safety laws.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

**9. CHARGES AND PAYMENT**

- 9.1 The price for the Goods and Services shall be as set out in the applicable Order or otherwise confirmed in writing by the Supplier to the Customer.
- 9.2 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to: (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 9.3 The Customer shall pay each invoice submitted by the Supplier in full and cleared funds to a bank account nominated by the Supplier, prior to delivery of the Goods and in any event within 30 days of the date of invoice or otherwise in accordance with any credit terms agreed in writing between the parties. Time for payment shall be of the essence of the Contract.
- 9.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services (as applicable) at the same time as payment is due for the supply of the Goods and/or Services. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time.

**10. LIMITATION OF LIABILITY**

- 10.1 Nothing in the Contract limits any liability for any liability that legally cannot be limited. References to liability in this clause 10 shall include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2 Subject to clause 10.1 (a) the Supplier shall not be liable to the Customer for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of production or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and (b) the Supplier's total liability to the Customer for each Order shall not exceed the price of the Goods and/or Services for that Order.
- 10.3 The Supplier shall not be responsible for performance by Third Party Providers. Liability of the Supplier to the Customer with respect to such Third Party Providers shall be limited to the amount that the Supplier may recover from such Third Party Providers as a consequence of a loss incurred by the Customer as a result of any error or service failure on the part of the Third Party Providers in connection with the Contract.
- 10.4 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in the Contract. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract. This clause 10 shall survive termination of the Contract.

**11. TERMINATION**

- 11.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if: (a) the Customer fails to pay any amount due under the Contract on the due date for payment (b) the Customer commits a material breach of any term of

- the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; (c) the customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; (d) the customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or (e) the customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 11.2 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.1(c) to clause 11.1(e), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 11.3 On termination of the Contract the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 11.4 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 12. CONFIDENTIALITY**
- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party except as permitted by clause 12.2. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 12.2 Each party may disclose the other party's confidential information (a) to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13. GENERAL**
- 13.1 **Assignment and other dealings.** The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 13.2 **Force majeure.** Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly.
- 13.3 **Notices.** (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be: (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (ii) sent by email to the address provided to a party for such purposes. (b) Any notice shall be deemed to have been received: (i) if delivered by hand, at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or (iii) if sent by email, at the time of transmission. (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 13.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 13.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 13.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 13.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 13.7 **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance

or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

13.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

13.9 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

13.10 **Governing law and jurisdiction.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.