

# MPSI TERMS AND CONDITIONS OF SALE



**MPSI**  
INTELLIGENT SOLUTIONS

All goods and services supplied by MPSI Limited are sold subject to the following conditions:-

## 1 Definitions

1.1 In these Terms:

“**CONTRACT**” means the contract for the sale and purchase of the Goods;

“**GOODS**” means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms;

“**INCOTERMS**” means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

“**ORIGINAL DELIVERY DATE**” means the date agreed between the Seller and the Buyer for the delivery of Goods notwithstanding that actual delivery of the Goods may take place on an alternative date;

“**BUYER**” means the person who accepts the Seller’s written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller in writing;

“**SELLER**” means MPSI Limited; (regd England and Wales, Company Number 5274990);

“**TERMS**” means the standard conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“**WRITING**”, and any similar expression, includes facsimile transmission and comparable means of communication.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

## 2 Applicable Terms

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller’s Written quotation (if accepted by the Buyer), or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods (including but not limited to performance figures, tolerances or characteristics) unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

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2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, technical data, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 All Sellers quotations for Goods availability are made subject to prior sale.

### **3 Quotations, Orders and Specifications**

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 Any order submitted by telephone ("Telephone Order") by the Buyer shall be accepted only in accordance with these Terms and shall not be accepted unless the order contains the official order number. Any confirmation in writing of telephone orders must contain the confirmation reference provided by the Seller at the time of order to prevent order duplication, failing which any duplication of delivery must be accepted and paid for in full by the Buyer.

3.3 Any descriptions, specifications, graphical representations or any other details provided by the Seller in relation to the Goods for the purpose of illustration of Goods shall not form part of the Contract.

3.4 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.5 Goods shall conform to the relevant manufacturer's specification of the Goods, which the Buyer shall have obtained from the relevant manufacturer or from the Seller upon Buyer's request.

3.6 Unless agreed in Writing to the contrary any Goods which are, customised to any specifications submitted by the Buyer, value added or are any other non-standard (including but not limited to Goods which are to be assembled in kit form), products which do not form part of the Seller list of products, work in progress and any other Goods identified by the Seller as non-cancellable and non-returnable (NC/NR) shall not be capable of cancellation or return and the Buyer shall complete and sign a detailed NC/NR form.

3.7 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer warrants that any design and or specification submitted to the Seller will not infringe any intellectual property right of any nature of any third party. The Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.8 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.9 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and

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materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## **4 Price of the Goods**

4.1 The price of the Goods shall be the Seller's quoted price.

All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any act or default by the Buyer (such as, without limitation, the cancellation by the Buyer of part of any order or non-attendance to agreed call off or schedule delivery arrangements) or, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.4 Where appropriate, the cost of delivery, non-returnable containers and any applicable advance payment charges will be charged to the Buyer in addition to the price of the Goods. Any applicable release documentation and certificate of conformity that the Seller is legally required to deliver, will be charged in addition to the price of the Goods at the sole discretion of the Seller.

4.5 For the avoidance of doubt, Buyers outside the UK are responsible (at their own expense) for obtaining any necessary import licences required in the country of destination and the Seller is responsible for seeking any necessary export licences required by the relevant UK authorities.

## **5 Delivery**

5.1 Unless agreed otherwise, packaging, carriage and insurance to the designated premises, and on default or designation to any trading address, of the Buyer shall be paid by the Buyer and shall be charged at the Seller's rates current at the time of despatch in addition to the price of the products. Subject to possible other rights of the Seller, delivery of the products to the carrier shall constitute delivery to the Buyer and the risk shall thereupon pass to the Buyer. Selection of the carrier and delivery route shall be made by the Seller unless specified by the Buyer. Seller shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to the Buyer's requested delivery dates..

5.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing.

The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

5.3 The Seller reserves the right to deliver the Goods in more than one instalment and invoice each instalment separately. Delivery of a smaller quantity than the quantity specified shall not relieve the Buyer of the obligation to accept delivery and pay for products delivered. Delay in delivery of one instalment shall not entitle the Buyer to cancel other instalments.

5.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

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5.5 If the Buyer fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:

5.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

5.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **6 Risk and Property**

6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

6.1.1 at the time of delivery to the carrier in accordance with Clause 5.1; or

6.1.2 in the event that delivery of the Goods is delayed for reasons attributable to the Buyer or its agents, at the time of the Original Delivery Date.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold and which have been sold, and any other services provided or agreed to be provided, for which payment is then due.

6.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured (with the Seller's interest noted on all insurance policies) and identified as the Seller's property, but the Buyer may subject to clause 6.6 resell or use the Goods in the ordinary course of its business.

6.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Buyer may not remove any identifying marks placed on the goods by the Seller and the Buyer, the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

6.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

6.6 The Buyer's right to re-sell or use the Goods in the ordinary course of business as set out in clause 6.3:

6.6.1 may be revoked at any time by the Seller giving notice to that effect if the Buyer is in default for more than 7 days in the payment of any sum whatsoever due to the Seller or in the event that the Seller has bona fide doubts as to the solvency of the Buyer;

6.6.2 shall automatically cease if a receiver, manager or administrator is appointed over the assets, undertaking or property of the Buyer, or a winding up or administration order against the Buyer is made or petitioned, or any petition or order in bankruptcy against the Buyer is presented or made, or the Buyer goes into voluntary liquidation (other than for the purposes of reconstruction or amalgamation while solvent) or calls a meeting of or makes arrangements or compositions with creditors.

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## 7 Warranties and liability

7.1 Subject to the following provisions the Seller warrants that the Goods will correspond with the relevant manufacturer's specification of the Goods within the warranty period as provided in clause 7.3.

7.2 The above warranty is given by the Seller subject to the following conditions:

7.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

7.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse (including static discharge), accident or alteration or repair of the Goods without the Seller's approval;

7.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

7.2.4 the above warranty does not extend to software, parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier of the Seller.

7.3 Unless otherwise specified, the Seller grants a 30 day product warranty period to its Buyer. Such warranty period shall commence upon delivery to the Buyer or the Original Delivery Date in the event of a delay in acceptance by the Buyer (whichever is the earlier). In the event that the Seller of the Goods grants a warranty for a longer period, the Seller will pass this extended warranty on to the Buyer at the Buyer's request in writing.

7.4 The Goods are intended to be used solely for the purposes specified by the manufacturer. Unless confirmed in writing by the Seller, such uses do not include (without limitation) the use of the Goods in life-preserving or supporting systems, or for any other purposes where a failure of the product may reasonably be expected to result in an injury to life, body or health or to unusually high pecuniary losses. In the event that the Buyer uses or resells any Goods for such purposes, the Buyer shall do so at its own risk and sole responsibility and shall fully indemnify the Seller and or the manufacturer against all claims, losses, damages and expenses incurred by the Seller and or the manufacturer as a result of the Buyer's breach of this clause.

7.5 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. And for the avoidance of doubt no liability whatsoever shall be incurred by the Seller in respect of any representation made by the Seller or his agents to the Buyer or his agents before the Contract was made where such representation related or referred in any way to (i) the correspondence of the Goods to any description or (ii) the quality of the Goods or (iii) the fitness of the Goods for any purpose whatsoever.

7.6 A claim by the Buyer which is based on any shortage or defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure and in any event within the warranty period pursuant to clause 7.3. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

7.7 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods free of charge or, at the

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Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.

7.8 Any Goods returned to the Seller pursuant to these Terms shall be subject to the Seller's RMA procedure. No return of Goods shall be accepted by the Seller without a Return Material Authorization ("RMA") Number, which may be issued by the Seller in its sole discretion. Returned Goods must be packaged in a manner that the Goods cannot be damaged in any way and this is solely the responsibility of the Buyer. All Goods for return shall be returned freight prepaid in the manner specified in the RMA. If returned Goods are claimed to be defective, a complete description of the nature of the defect must be included with the returned Goods. Goods not eligible for return shall be returned to the Buyer, freight collect.

7.9 The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supply or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer.

7.10 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- 7.10.1 Act of God, explosion, flood, tempest, fire or accident;
- 7.10.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 7.10.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 7.10.4 import or export regulations or embargoes;
- 7.10.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 7.10.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 7.10.7 power failure or breakdown in machinery.
- 7.10.8 Manufacturer's delay
- 7.10.9 Allocation (shortage of Goods)
- 7.10.10 Delays attributable to shipping companies, freight forwarders and customs

## 8 Payment

8.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after the Original Delivery Date or the delivery of the Goods (whichever is the earlier), unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the seller has notified the Buyer that the Goods are ready for collection or (as the case maybe) the Seller has tendered delivery of the Goods.

8.2 The Buyer shall pay the price of the Goods (without any deduction) within 30 days net of the date the relevant invoice was issued by the Seller save for those invoices which stipulate payment in advance, payment upon delivery and orders on reduced net credit terms. The Seller shall be entitled to recover the price of the Goods, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

8.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:

- 8.3.1 cancel the contract or suspend any further deliveries to the Buyer;

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8.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

8.3.3 charge the Buyer compounded interest (both before and after any judgment) on the amount unpaid, at the rate of 1.5% per month (apportioned by the day) until payment in full is made.

8.4 Payments for exports from the United Kingdom shall be made by Buyer via an international bank wire transfer (without deduction of bank charges and fees), escrow agreement or irrevocable unconditional Letter of Credit established in favour of the Seller and confirmed by a London Clearing Bank.

The Letter of Credit shall:

8.4.1 have an initial validity equal to the delivery period plus one month;

8.4.2 permit part shipments; and

8.4.3 provide for the release on each shipment of 100% of the contract value thereof.

No liability to deliver goods shall arise before the Seller receives such a Letter of Credit.

8.5 Any discounts specified by the Seller shall apply only where payment is received as indicated in accordance with these Terms. Payment shall not be withheld on account of any claim by the Buyer against the Seller. The Seller reserves the right to suspend deliveries where payment for any order, related or otherwise, has not been made by the due date and remains outstanding.

8.6 If at any time any sum of money becomes payable by the Seller to the Buyer under or in connection with the Contract or any breach thereof by the Seller, the Seller shall be entitled, in addition to any other rights of set off conferred by law, to set off against such sum any amount then due, or which may at any time thereafter become due, to the Seller from the Buyer under the Contract or any other contract order or transaction between the Seller (or any such other company) and the Buyer.

## 9 Intellectual Property

9.1 The sale of the Goods and the publication of any information or technical data relating thereto does not imply, and the Seller gives no warranty or condition whether expressed or implied by statute, at common law or otherwise as to freedom from infringement of the patent, registered design, trademark, copyright or other intellectual property rights of third parties (whether arising or created before or after the date of delivery of the Goods) ("IPR") in respect of the Goods or any particular application thereof or any particular application thereof or any method in which the Goods are used or disposed of or any combination of the Goods with or into any other product (whether or not supplied by the Seller), whether or not that application, method or combination is the only application, method or combination in which the Goods can be disposed of or used.

9.2 If an order includes software or any other intellectual property, such software or any other intellectual property is provided by the Seller to the Buyer subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing in these Terms shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

## 10 Confidentiality

10.1 The Seller and the Buyer shall each keep confidential and shall not without prior consent in writing from the other disclose to any third party, any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the Goods and the relevant order of Goods.

## 11 Termination

11.1 This clause 11 applies if:

11.1.1 the Buyer commits any breach of the Terms;

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11.1.2 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or  
11.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or  
11.1.4 the Buyer ceases, or threatens to cease, to carry on business; or  
11.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 12 Export terms

12.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.

12.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any governmental taxes and duties on them. The Seller shall not be liable for any loss, damages or claims whatsoever occasioned by any act or omission by the Buyer in contravention of any export regulation issued by any country including but not limited to the United States of America.

12.4 Unless agreed to the contrary in writing between the parties, the Seller shall at its sole discretion select the carrier and delivery route for the Goods.

12.5 The Goods are sold by the Seller to the Buyer with the intention that they are to remain within the country of delivery. In the event that the Goods are offered for re-sale, resold or used elsewhere it is the sole responsibility of the Buyer to ensure that any applicable export or import control provisions of the relevant country or countries are complied with.

12.6 Any Goods supplied by the Seller the export of which from the United Kingdom is restricted by any applicable export or import regulations shall not be exported by the Buyer without the prior approval of the relevant authorities concerned with the administration of such regulations.

## 13 Governing Law

All contracts made between the Seller and the Buyer shall be constructed in accordance with and governed in all respects by English Law and the Buyer agrees to submit to the exclusive jurisdiction of English Courts.

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