

## ICORE INTERNATIONAL LIMITED – CONDITIONS OF SALE

### **1. Definitions**

In these conditions the following words shall have the following meanings:

1.1. 'The Company' means Icore International Limited of 220 Bedford Avenue, Slough, SL1 4RY.

'The Contract' means the contract between the Company and the Customer for the sale and purchase of the Goods (and where appropriate, the supply of the Services), into which these conditions are incorporated.

1.2. 'The Customer' means the person, firm or company who buys or agrees to buy the Goods and services from the Company

1.3. 'The Goods' means the goods including any instalment of the goods or any parts of them, which the Customer agrees to buy from the Company

1.4. 'The Services' means the services, if any, which the Company agrees to supply to the Customer ancillary to the supply of the Goods.

### **2. General**

2.1. These conditions shall apply to all contracts for the sale of Goods and supply of Services by the Company to the Customer to the exclusion of all other terms and conditions, including any terms and conditions which the Company may purport to apply under any purchase order, confirmation of order standard or printed form or other document, whenever furnished or supplied.

2.2. No variation to these conditions (including any special terms and conditions agreed between the parties) shall be effective unless agreed in writing between the authorised representatives of the Customer and the Company

2.3. No order by the Customer shall be binding on the Company until and unless it has been accepted in writing by the dispatch by the Company of its acknowledgement (including these conditions printed on the reverse) shall apply.

2.4. The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed in writing by the Company. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed

2.5. Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to storage, application, installation or use of the goods, which is not confirmed in writing by the Company, is followed or acted upon entirely at the Customer's own risk and accordingly, the Company shall not be liable for any such advice or recommendation which is not so confirmed

2.6. In entering into this contract the Customer assumes responsibility for the Goods being sufficient for their purpose. As the Company is not responsible for system design and has the Customer has greater knowledge of its own requirements, the Company shall not accept any responsibility for the performance or suitability of the Goods in their final operating environment whether or not details of the final operating environment whether or not details of the final operating environment have been made available to the Company

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

2.8. The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) placed by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its term. If the Company shall not have received all necessary information, materials, packaging, free-issue components or other prerequisites for the Contract from the Customer or the Customer's agents, sufficient to fulfil the terms of the contract, it may either increase the prices charged to the Customer by such amounts as shall be reasonable to enable it to cover any extra costs or expenditure necessitated by such lack of information, or delay production of the Goods

### **3. Specifications**

The quantity, quality and description of, and any specification for, the Goods shall be as set out in the Company's order acknowledgement and accompanying documents (if any) PROVIDED ALWAYS that the Company in line with its policy of continuous product improvement, reserves the right to make amendments if such amendments in the opinion of the Company at the time will lead to an improvement in the design, quality or performance of the Goods, or to supply Goods of equivalent or approximately equivalent performance if the Goods referred to in the Company's order acknowledgement shall no longer be readily available at the time of delivery, or to make any changes which are required to conform with any applicable statutory or EC requirements

### **4. Price and Terms of Payment**

4.1. The price payable by the Customer shall be the price set out in the Company's order acknowledgement which shall be valid for a period of 60 days, unless otherwise expressly agreed in writing by the Company. Any such price is exclusive of VAT which shall be due and payable by the Customer to the Company at the rate ruling at the date of the Company's invoice

4.2. Except as otherwise expressly agreed in writing by the Company, all prices are given by the Company on an ex-works basis, and where the Company agrees to deliver the Goods otherwise that at the Company's shall be liable to pay the Company's charges for transport, packaging and insurance

4.3. Unless otherwise expressly agreed in writing by the Company, payment of the Company's invoice will be within 30 days of the date of invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the context.

4.4. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

4.4.1. Cancel the Contract or suspend any further deliveries to the Customer

4.4.2. Appropriate any payment made by the Customer to such of the Goods (or any Goods supplied under any other Contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

4.4.3. Charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of (eight) per cent (8%) per annum above the base rate from time to time of Lloyds Bank plc or pro rata until payment is made in full

4.5. The Customer shall not be entitled to withhold payment by reason of any alleged breach of Contract whether in respect of the Contract or any other contract between the Customer and the Company, nor shall the Customer be entitled to set off against any amount payable under the Contract to the Company any monies owed by the Company to the Customer on any account whatsoever, whether such a right is conferred on the Customer by statute or otherwise

4.6. Where any Contract formed with the Customer is severable or invoices more than one delivery each delivery shall constitute a contract in itself and shall be paid separately in accordance with condition 4.2 above.

4.7. The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in costs between the date of the order and the date of delivery of the Goods and/or provision of Services to the Company, which is due to any factor beyond the control of the Company, and such increased costs (with VAT thereon) will be added to the invoice for the Customer's order as soon as reasonably practicable thereafter)

## **5. Delivery**

5.1. Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection, or, if some other place is agreed by the Company, by the Company delivering the Goods to that place

5.2. Delivery times or dates which are specified in an order or acceptance shall be considered as approximate only and although the Company will make every effort to make any delivery date so specified no claim shall lie against the company for any delay in delivery or short delivery. Time for delivery shall not be of the essence of the Contract and delay in delivery shall not be grounds entitling the Customer to cancel any order. The Goods may be delivered by the Company in advance of the quoted delivery date by giving reasonable notice to the Customer.

5.3. The Company may make delivery by instalments. Where Goods are delivered by instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with the conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated

5.4. If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

5.4.1. Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage, or

5.4.2. Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the contract price

5.5. No Goods will be made available for collection or dispatched in the event that the Customer already has an overdue account with the Company, until all such overdue amounts are paid

## **6. Property and Risk**

6.1. Risk of damage to or loss of the Goods shall pass to the Customer: (i) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or (ii) in the case of Goods to be delivered otherwise than at the Company's premises, at the time when the Goods are delivered to the Customer's premises or other place agreed between the Company and the Customer, or, if the Customer wrongfully fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods

6.2. Notwithstanding delivery and passing of risk in the Goods, the Customer will not own the Goods until the Company has received in cash or cleared funds payment in full of the price of the Goods including VAT and payment has been made to the Company of all sums due or owing from the Customer to the Company on any account whatsoever

6.3. Until such time as property in the Goods passes to the Customer shall hold the Goods as the Company's fiduciary agent and bailee, keep the Goods separate from any other goods of the Customer and third parties and properly stored, protected and insured, and identified as the Company's property, but subject to condition 6.6 the Customer shall be entitled to 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 Customer pursuant to condition 6.2 (and provided the Goods are still in existence and have not been sold on) the Company shall have the right at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails to do so immediately, the Company may recover the Goods (including stopping the Goods in transit) and may re-sell the Goods or any of them. The Company's employees, officers or agents may enter upon the Customer's premises for that purpose or during normal business hours and on reasonable notice, for the purpose of verifying the Customer's compliance with the provisions of condition 6.3 above

6.5. To enable the Company to recover and re-sell Goods in the circumstances set out in condition 6.4 above, where the Goods or any part of them are on third party premises, the Customer hereby irrevocably appoints the Company and its employees, officers or agents as its agents to exercise the same rights to go onto the third party's premises as the Customer itself

6.6. The Customer shall not pledge or in any way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company shall, without prejudice to any other right or remedy of the Company, immediately become due and payable

6.7. The Company shall have the right to maintain an action against the Customer for the price of the Goods and any other monies due by the Customer to the Company, notwithstanding that property in the Goods has not passed to the Customer

## **7. Warranty**

7.1 Subject to the conditions set out below, the Company warrants that the Goods will correspond with their specifications at the time of delivery and be free from defects in materials and workmanship for a period of 12 months from delivery

7.2 The above warranty is given by the Company subject to the following conditions and the other provisions of this condition 7:

7.2.1 The Goods or part is of the Company's own manufacture and the defect develops after normal use and maintenance

7.2.2 The Company has been paid the total price for the Goods in full by the due date for payment

7.2.3 The Customer informs the Company of any defect with seven (7) days of becoming aware of such defect arising

7.2.4 At the Company's discretion either the Company is given access for inspection, investigation and testing of the Goods or part or the defective Goods or part are returned carriage paid (at the Customer's risk) to the Company

7.2.5 The Goods or part have been kept in a dry, secure location and protected from the elements and damage by third parties and

7.2.6 The Customer does not attempt to repair or tamper with the Goods or allow any third party to do so

7.3 The Company shall be under no liability and the warranty contained in this condition 7 shall not apply:

7.3.1 In respect of any defect in the Goods or lack of technical performance of the Goods arising from any information, drawings, designs or specifications supplied by the Customer

7.3.2 In respect of any defect arising from wear and tear, wilful damage, negligence, neglect, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's prior written approval

7.4 In the case of the Goods or parts not of the Company's own manufacture, the Company shall at the request and cost of the Customer assign to the Customer the benefits obtained under any warranty given by the Company's supplier

7.5 The Company shall be entitled to charge at its normal rates for the time being for any visits to the Customer's premises in relation to the alleged defects or failures where such visits are found to be unnecessary or not covered under the terms of this warranty

7.6 Where any valid claim is made in accordance with this condition 7 regarding a defect in the materials or workmanship of the Goods or a failure to comply with the specification, the Company shall be entitled to replace the Goods or the part in question free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) but save as set out in condition

7.7 below, the Company shall have no further liability to the Customer

7.7 Subject as expressly provided in these conditions, all warranties, conditions or other terms, whether express or implied by statute, common law custom and practice or otherwise, are excluded to the fullest extent permitted by law

7.8 Except in respect of death or personal injury caused by the Company's negligence, the Company shall be under no liability whatsoever to the Customer by reason of any representation (unless fraudulent) or any implied warranty (save that the Company has good title to the Goods when the property in them is to pass) condition or other term or any duty in tort or all common law or under the express terms of the Contract for losses, damages, costs or expenses of any kind, whether direct or indirect (including, but not limited to, loss of profits, loss of business or contracts, loss of operating time, loss of use whether or not foreseeable, or other consequential loss of any description, whether caused by negligence of the Company, its employees, agents or otherwise) arising out of or in connection with the supply of the Goods by the Company or their subsequent use or resale by the Customer and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods save as expressly provided in these conditions

### **8. Intellectual Property and Ownership**

8.1 Unless expressly agreed in writing to the contrary, the specification and design of the Goods (including the copyright, design right or other intellectual property in the Goods and the product data sheets, drawings, designs and other design documentation, software, tools, dies and equipment relating to the Goods shall as between the parties be the property of the Company

8.2 The Customer shall not remove, alter, deface or tamper with any of the marks, names, numbers or other means of identification used on the Goods or allow anyone else to do so

8.3 Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Company, then the Customer shall indemnify the Company against all losses, damages, costs, expenses awarded against or incurred by the Company 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 Company's use of the Customer's specification or design

### **9. Cancellation and Suspension of the Contract**

9.1 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation

9.2 This condition 9.2 applies if:

9.2.1 The Customer commits an act of bankruptcy or has an Administration Order made against it or suffers execution upon its goods, or compounds or makes any arrangements with its creditors or a Winding-up Order is made, or an effective resolution is passed putting the Customer into liquidation, or the Customer has a Receiver or an Administrative Receiver appointed or its property or any part thereof or a cheque given by the Customer to the Company for any purpose is dishonoured and has to be represented or the Customer ceases or threatens to cease, to carry on, business or the Company reasonably apprehends that any of the above is about to occur in relation to the Customer and notifies the Customer accordingly, or

9.2.2 The Customer fails to make any payment due under the Contract, or otherwise is in breach of its obligations under the Contract, or any other contract between the Company and the Customer or

9.2.3 The Company or one of its suppliers in relation to the Goods is subject to unforeseen events (including without prejudice to the generality of the foregoing, those referred to in condition 10 below) which materially affect the commercial effect of, or the ability of the Company to fulfil the Contract or;

9.2.4 The Company receives notice of any claim alleging that the Goods or any part thereof or any process applied to the Goods infringes any patent, copyright, design right, trade mark or other industrial or intellectual property rights of any other person.

9.3 If condition 9.2 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer 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

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

The Company shall not be liable to the Customer or be deemed to be in breach of Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods if the delay or failure is due to any cause or circumstances beyond the reasonable control of the Company. Without prejudice to the generality of the foregoing such circumstances included; acts of God, explosion, lightning, flood, fire or accident; war or threat of war, sabotage, insurrection, or civil disturbance; acts, restrictions, regulations, by-laws, prohibitions, or other similar measures, import or export restrictions, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party) difficulties in obtaining materials, labour, fuel, parts or machinery; power failure or breakdown of machinery

#### **11. Export Terms**

11.1 In these conditions 'Incoterms' means the international rules for the interception of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context requires, any terms or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail

11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this condition shall (subject to any special terms agreed in writing between the Company and the Customer) apply notwithstanding any other provision of these conditions

11.3 The Customer 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 applicable duties

11.4 Unless otherwise expressly agreed in writing between the Company and the Customer, the Goods shall be delivered ex-works the Company's premises

11.5 The Customer shall be responsible for arranging for any testing and inspection of the Goods at the Company's premises before shipment and the Company shall have no liability for any claim made after shipment in respect of any defect in the Goods which would have been apparent on such inspection

11.6 Unless otherwise agreed in writing by the Company, payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a leading London bank acceptable to the Company within ten (10) days of the Company's acceptance of the Customer's order

## **12. General**

12.1 The Company shall be entitled to sub-contract the fulfilment of the Contract or any part thereof, in which case any act or omission of such sub-contractor shall be deemed to be the act or omission of such sub-contractor shall be deemed to be the act or omission of the Company

12.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision

12.3 The termination of the Contract howsoever arising shall be without prejudice to any rights and duties of either party accrued prior to termination. Without prejudice to the generality of the foregoing the Company's rights set out in condition 6 (Property and Risk) shall continue beyond the termination of the Contract, however arising

12.4 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or part such a provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed excluded but without invalidating any of the other provisions of these conditions

12.5 Any notice to be given or served under the Contract shall be in writing and shall be sufficiently given to or served on the party to whom or to which it is addressed if it is sent by recorded delivery first class post or facsimile to the party at his or its last known address, and shall be deemed to be given or served on the business day following transmission in the case of facsimiles, the third business day following posting in the case of ordinary mail and in the case of notices delivered in person, delivery shall be deemed immediate

12.6 The Contract shall in all respects be governed by English Law and in the event of any dispute the Customer and Company agree to submit to the non-exclusive jurisdiction of the English courts