

TERMS AND CONDITIONS OF SALE OF GOODS

1. Definitions

In these terms and conditions:

- (a) **"the Company"** means GD Systems;
- (b) **"the Customer"** means the person or persons named on any invoice or estimate, or the person or persons to whom any such invoice or estimate is addressed, or the person or persons with whom the Company has, or will have, a contract;
- (c) **"the Goods"** means the goods (including any instalment of the Goods or parts for them) specified on any quotation, order form, invoice or estimate supplied to the Customer, or to be supplied to the Customer, under any contract;
- (d) **"the Services"** means supply, installation, commission and maintenance of the goods as described above
- (e) **"the Contract"** means the contract for the sale and the purchase of the Goods and or the provision of the Services;
- (f) **"these Conditions"** means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer;
- (g) **"writing"** includes telex, cable, facsimile transmission and comparable means of communication.

2. Formation of Contract

- 2.1 The Company shall sell and the Customer shall purchase the Goods and/or the Company shall provide the Services and the Customer shall pay for the Services in accordance with any written quotation of the Company which is accepted by the Customer, or any written order of the Customer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions 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 Customer.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing by the authorised representative of the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods and/or the Services and no such representations shall be binding on the Company, unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods and provision of Services which is not confirmed in writing by the Company, is followed or acted upon entirely at the Customer's own risk.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. Orders

- 3.1 No order submitted by a Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
- 3.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of, and any specifications for, the Goods or the Services provided shall be those set out in the Company's quotation (if

accepted by the Customer) or the Customer's order (if accepted by the Company).

- 3.4 The descriptions and illustrations contained in the Company's catalogues, price lists and advertisements, or otherwise communicated to the Customer, are for illustrative purposes only and nothing contained in any of them shall form part of the Contract.

4. **Specification**

- 4.1 If the Goods are to be manufactured, or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses ordered against, or incurred by, the Company in connection with, or paid, or agreed to be paid, by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property right of any other person which results from the Company's use of the Customer's specifications.
- 4.2 The Company reserves the right to make any changes in the specification in the Goods which are required to conform with any applicable safety or other statutory requirement or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

5. **Cancellation by Customer**

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 costs of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

6. **Price**

- 6.1 The price of the Goods or the cost of the Services shall be the Company's quoted price or, where no price has been quoted (or where the Customer has been notified that a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order.
- 6.2 The Company reserves the right, by giving notice to the Customer at any time before delivery of the Goods, or provision of the Services, to increase the price of the Goods, or the cost of the Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, and without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specification for the Goods or timing of the provision of the Services which is requested by the Customer, or any delay caused by any instructions of the Customer, or failure of the Customer to give the Company adequate information or instructions.

7. **Delivery charges**

Except as otherwise agreed in writing between the Company and the Customer, the Customer shall be liable to reimburse any charges incurred by the Company in respect of transport, packaging, insurance and all other related delivery charges.

8. **Value added tax**

All prices are exclusive of any applicable value added tax for which the Customer shall be additionally liable to the Company.

9. **Payment**

- 9.1 Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods or the cost of the Services on or at any time after delivery of the Goods or provision of the Services respectively, unless in respect of the supply of goods the Goods are to be collected by the Customer, or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection, or (as the case may be) the Company has tendered delivery of the Goods.
- 9.2 The Customer shall pay the price of the Goods or the cost of the Services within 30 days of the date of the Company's invoice, notwithstanding that delivery may not have taken place or the provision of the Services may not have been completed or that the

property in the Goods has not passed to the Customer. The time of payment of the price of the goods or the cost of the services shall be of the essence of the Contract.

- 9.3 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:
- (a) cancel any contract or suspend any further deliveries to the Customer;
 - (b) appropriate any payment made by the Customer to such of the Goods or services (or the Goods or services supplied under any other contract between the Company and the Customer) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
 - (c) charge the Customer interest (both before and after any judgment) on the amount unpaid, at a rate of 4% per annum above the base lending rate of Lloyds Bank plc for the time being, from the due date for payment until the actual date of payment.

10. Delivery of Goods

- 10.1 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.
- 10.2 Any dates quoted for delivery of any Goods or provision of any Services are approximate only and the Company shall not be liable for any delays in delivery of any Goods or provision of the Services howsoever caused. Time for delivery of the goods or provision of the services shall not be of the essence of the Contract. The Goods may be delivered by the Company in advance of the quoted delivery date or services provided in advance of the quoted completion date upon reasonable notice to the Customer.
- 10.3 Where any Goods are to be delivered in 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 these 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.
- 10.4 If, notwithstanding paragraph 10.2, the Company incurs any liability for late or non-delivery, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods, and in any event shall not exceed one half of 1 % of the Contract price per week of delay up to a maximum of 10% of the total Contract price.
- 10.5 If the Customer fails to take delivery of the Goods, or fails to give the Company adequate delivery instructions at or by 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:
- (a) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract, or charge the Customer for any shortfall below the price under the Contract.

11. Risk

Risk of damage to or loss of the Goods shall pass to the Customer:

- (a) 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; and
- (b) in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.

12. Reservation of title

- 12.1 The Goods sold under these Conditions shall remain the absolute property of the Company and legal title in the Goods shall remain vested in the Company until payment in full of all amounts invoiced or due to the Company in respect of the Goods,

or until the Goods are resold by the Customer, whichever shall first occur. If the Customer shall enter into liquidation, have a winding-up order made against it, or have a receiver, administrator or administrative receiver appointed over its assets, income or any part thereof before the property in the Goods has passed in accordance with this Condition, the Company shall be entitled, immediately after giving notice of its intention to repossess the Goods, to enter upon the premises of the Customer with such transport as may be necessary and to repossess any Goods to which it has title under this Condition. No liquidator, receiver, administrator or administrative receiver of the Customer shall have authority to sell goods to which the Company has title without the prior written consent of the Company.

- 12.2 Until such time as the property in and legal title to the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected, insured and identified as the Company's property. Until that time, the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale of the Goods, including insurance proceeds, and shall keep all such proceeds separate from any moneys of the Customer and of third parties.
- 12.3 The Customer shall not be entitled to pledge or charge, by way of security for any indebtedness, any of the Goods which remain the property of the Company but, if the Customer does so, all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable.
- 12.4 The Company shall be entitled to maintain an action for the price of the Goods notwithstanding that title in them has not passed to the Customer.

13. **Warranties**

- 13.1 Subject to the conditions set out in paragraph 13.2, the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery.
- 13.2 The warranty in paragraph 13.1 is given by the Company subject to the following conditions:
- (a) The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer.
 - (b) The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, use by unauthorised or inexperienced personnel, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without the Company's approval.
 - (c) The Company shall be under no liability under the warranty in paragraph 13.1 (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
 - (d) The warranty in paragraph 13.1 does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 13.3 Any claim by the Customer which is based on any defect in the quality or condition of the Goods, or their failure to correspond with specification, shall be notified to the Company within seven days from the date of delivery or the date of hand over or (whether the defect or failure was not apparent on reasonable inspection) as soon as practicable after discovery of the defect or failure. If the Customer does not notify the Company accordingly, the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered or handed over in accordance with the Contract.
- 13.4 Subject to the express provisions of these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.
- 13.5 Where any 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 Company in accordance with these Conditions, the Company shall be entitled to repair

or replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, allow the Customer credit for their invoice value, but the Company shall have no further liability to the Customer.

- 13.6 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation or any express or implied warranty, condition or other term for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever.

14. Force majeure

The Company shall not be liable to the Customer 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 Company's obligations in relation to the Goods or Services, if the delay or failure was due to force majeure or any other cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

- (a) imposition of import or export regulations or embargoes;
- (b) government action, ex-appropriation or confiscation of facilities, war, terrorist activity or riot;
- (c) fire, explosion, power failure or breakdown in machinery;
- (d) floods or other exceptionally severe weather conditions;
- (e) transport delays, cancellations or interruptions of service; or
- (f) strikes or other industrial action or disputes, whether involving employees of the Company or of any third party.

Provided that if any such cause shall delay or prevent the due performance by the Company of the Contract for more than 90 days, the Company shall so notify the Customer in writing and the Customer may, within seven days of written notification, cancel that part of the Contract which has been affected by such delay or failure of performance.

15. Insolvency of Customer

If the Customer, being a body corporate, shall pass a resolution or suffer an order of the Court to be made for winding-up, or if a receiver, administrator or administrative receiver shall be appointed or, being an individual or partnership, shall suspend payment, propose or enter into any composition or arrangement with his or their creditors, or have a bankruptcy order made against him or them, then the Company shall have the right, without prejudice to any other contract with the Customer, not to proceed further with the Contract, and shall be entitled to charge for services already provided (whether completed or not) and for goods and materials already purchased for the Customer, such charge to be an immediate debt due from the Customer.

16. Arbitration

Any dispute or difference of any kind whatsoever arising out of any contract made between the Company and the Customer shall be submitted to arbitration in England in accordance with and subject to the provisions of the Arbitration Acts 1950 to 1979 or any statutory modification or re-enactment for the time being in force.

17. General

- 17.1 Any notice required or admitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business, or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 17.2 No waiver by the Company of any breach of any contract by the Customer shall be considered as a waiver of any subsequent breach of that or any other provision.
- 17.3 If any provisions of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 17.4 The paragraph headings are for ease of reference only and shall not affect construction.

18. Applicable law

The Contract and these Conditions shall be governed by and construed in accordance with English law and the parties acknowledge and accept the exclusive jurisdiction of the English Courts.