

Simms International plc

STANDARD CONDITIONS OF SALE

1. **CONTRACT:** These Terms and Conditions apply to any contract for the sale of Goods by Simms International Plc ("the Supplier") to a customer ("the Purchaser") for resale by the Purchaser. They do not apply to a sale within consumer protection law.

2. **OFFER AND ACCEPTANCE:** The advertising or display of information in respect of any product is not an offer but an invitation to treat issued by the Supplier. The submission of an order constitutes an offer to purchase the Goods specified in the order. A contract shall be made only when the Supplier accepts an order, by sending a notification of acceptance to the Purchaser.

3. **PRICES:** Prices stated in a catalogue or sales literature issued by the Supplier are indicative prices and may be altered without notice. The price stated in the Supplier's current price guide at the date of receipt of an order shall be the contract price exclusive of VAT.

4. **PAYMENT:** The Purchaser shall pay the contract price in consideration of the supply of the Goods in accordance with these Terms and Conditions. The Supplier shall submit an original and a copy invoice to the Purchaser, containing all appropriate references, requesting payment of the contract price plus any delivery charges and VAT. Where the Purchaser is not a registered account holder with the Supplier, the Purchaser shall make payment for the goods by cleared funds before the Supplier dispatches the goods to the Purchaser.

5. **ACCOUNT HOLDERS:** Where the Purchaser is a registered account holder with the Supplier, the contract price, plus any delivery charges and VAT, shall be charged to the Purchaser's account. The Supplier shall send a statement of account to the Purchaser each month and the Purchaser shall make payment of all amounts due within 30 days after receipt of the statement or at such other times as may be agreed. If the Purchaser fails to make payment by the due date, the Supplier shall have an absolute discretion to close the account.

6. **NON-PAYMENT:** In any case where the Purchaser fails to make any payment by the due date, then, without prejudice to any other rights or remedies, interest shall accrue from that date until the date of payment, at a rate 5 per cent above the Bank of England base rate from time to time in force.

7. **DESCRIPTION:** Descriptions of products in any catalogue or sales literature issued by the Supplier are given for advertising and providing a means of reference. They shall not form part of the description of Goods for a sale by description. The Goods are described in the order form which forms part of the contract. The Goods supplied to the Purchaser shall conform to the description specified in the contract, subject to the following qualifications:

a) the Supplier shall have the right to change any detail as to the construction, design or specification of products as advertised provided that the product so changed is substantially similar and compatible for all purposes in respect of its use. The Purchaser shall accept such products as so changed in fulfilment of the order notwithstanding that they do not correspond exactly with the advertised descriptions;

b) the Supplier shall have the right, if the Goods specified in the order are unavailable, to provide similar Goods in substitution, provided that the substituted Goods are of equivalent standard and price and are compatible for all purposes in respect of their use. The Purchaser shall accept such substituted products in fulfilment of the order notwithstanding that they do not correspond exactly with the description specified in the order.

8. **LABELLING AND PACKAGING:** The Supplier shall ensure that the Goods are packed and marked in a proper manner and in accordance with any statutory

requirements and any requirements of the carriers. The name of the contents shall be clearly marked on each container and all containers of fragile Goods shall bear prominent warnings.

9. **DELIVERY:** The Supplier shall deliver the Goods to the address specified by the Purchaser at the time of the order. Before dispatch, the Supplier shall send to the Purchaser at the address for delivery an advice note specifying the means of transport, the place and date of dispatch, and the number of packages. The Purchaser shall pay the Supplier's standard charge for delivery in addition to the price of the Goods. Wherever possible, the Goods shall be delivered within 14 days after acceptance of the order but that time shall be treated as an estimate only. The Supplier shall inform the Purchaser of any delay as soon as the Supplier becomes aware of it. The Supplier shall not be liable for any loss or damage incurred by the Purchaser by reason of delivery after the estimated delivery date. The Purchaser shall make all arrangements necessary to take delivery at the time notified by the Supplier. If the Purchaser is unable to take delivery at the time when the Goods are due and ready for delivery, the Supplier shall store the Goods safely until their actual delivery and the Purchaser shall be liable for any reasonable additional costs, including insurance, incurred by the Supplier in doing so.

10. **TITLE AND RISK:** All risk in the Goods shall pass to the Purchaser at the time of delivery. Even though risk has passed, the Purchaser shall not own the Goods until the Supplier is paid in full and no other amount is owed by the Purchaser in respect of other Goods supplied by the Supplier. In the event of the Purchaser failing to make full payment by the due date under this or any other contract with the Supplier, then, without prejudice to any of its other rights or remedies, the Supplier shall have the right to recover and re-sell any or all of the Goods supplied under this contract and may enter upon the Purchaser's premises by its servants or agents for that purpose.

11. **DAMAGE IN TRANSIT:** The Supplier shall without charge either repair or replace (at the option of the Supplier) the Goods if they are damaged in transit or having been placed in transit fail to be delivered, provided that: (a) in the case of damage the Purchaser shall within 10 days after delivery give notice to the Supplier that the Goods have been damaged; (b) in the case of non-delivery the Purchaser shall within 5 days of the notified date of dispatch give notice that the Goods have not been delivered.

12. **INSPECTION:** The Supplier shall allow the Purchaser or its authorised representative to make any inspection of the Goods that it may reasonably require before the dispatch of the Goods. No failure to make complaint at the time of such inspection and no approval given during or after such inspection shall constitute a waiver of any rights of the Purchaser under these Terms and Conditions or otherwise in law.

13. **REJECTION:** The Purchaser may by written notice to the Supplier reject any Goods which fail to meet the requirements specified in the contract. Such notice shall be given within a reasonable time after delivery. If the Purchaser rejects any Goods in accordance with this Clause, the Supplier shall pay the actual and direct costs incurred by the Purchaser in returning the Goods or shall collect the Goods from the Purchaser at the Supplier's expense. The Purchaser shall be entitled either to have the Goods replaced or to obtain a refund of any payment made by or charged to the Purchaser.

14. **WARRANTY:** The Supplier shall supply the Goods to the Purchaser with the benefit of any warranty given by the manufacturer. In the case of Goods manufactured by Kingston Technology Company, the terms of any such warranty, in the form applicable at the date when the order is accepted by the Supplier, shall be deemed to be incorporated into these Terms and Conditions. The Supplier gives no other warranty in respect of the Goods, including any implied warranty as to the quality of the Goods or their fitness for a particular purpose.

Any Goods which fail to meet the standards provided by the manufacturer's warranty shall be returned to the

Supplier, at the Supplier's expense, for replacement, repair or credit at the Supplier's absolute discretion, provided that (a) any Goods found not to be faulty shall be credited to the Purchaser's account at the price paid by the Purchaser minus a restocking charge of 20 per cent (subject to a minimum charge of £20) or returned to the Purchaser at the Purchaser's expense as the Supplier shall determine in its absolute discretion; (b) any Goods found to have had parts removed since delivery to the Purchaser shall be returned to the Purchaser at the Purchaser's expense.

15. **INTELLECTUAL PROPERTY RIGHTS:** The Supplier shall take all necessary measures to ensure that the sale of the Goods to the Purchaser will not infringe any third party Intellectual Property Rights, namely any patents, trade marks, service marks, design rights, applications for any of the above rights, copyright, trade or business names or other similar rights or obligations whether registrable or not in any country including but not limited to the United Kingdom. The Supplier shall indemnify the Purchaser against all claims, proceedings, damages, costs, expenses and any other liability or loss incurred by the Purchaser by reason of the possession or sale by the Purchaser of any Goods, or other material delivered by the Supplier, which involves any infringement of the Intellectual Property Rights of any third party.

16. **PERSONAL INJURY INDEMNITY:** The Supplier shall indemnify the Purchaser against all claims, proceedings, damages, costs, expenses and any other liability or loss incurred by the Purchaser in respect of any death or personal injury which is caused by any defect in the Goods or any wrongful act or omission of the Supplier.

17. **LIMITATION OF LIABILITY:** In the event of there being any defect in the Goods, any breach of these Terms and Conditions by the Supplier other than a matter falling within Clause 15 or 16, or any other unlawful act or omission by the Supplier, the liability of the Supplier shall be limited, so far as the law permits, to the refund of the amount paid by the Purchaser for the supply of the Goods under these Terms and Conditions. In no circumstances shall either Party be liable for any indirect or consequential loss, damage, cost or expense sustained by the other Party including (without limitation) any loss of production, contracts, goodwill, profits or savings, save to the extent of any liability that cannot be excluded by law.

18. **LOSS OF DATA:** It shall be the responsibility of the Purchaser to backup any software or data that may be affected by the installation or use of the Goods in any computer system. The Supplier shall not be liable for any loss or corruption of software or data arising from the installation or use of the Goods by the Purchaser.

19. **SERVICE OF NOTICE:** Any notice to be given to either Party under these Terms and Conditions shall be sent by pre-paid recorded delivery or registered post or by facsimile transmission or electronic mail and shall be deemed to have been received within 72 hours of posting or within 24 hours of being sent to the correct fax number or e-mail address.

20. **SEVERABILITY:** If any provision of these Terms and Conditions is declared by any court or other competent authority to be illegal or otherwise unenforceable, the Parties shall amend that provision so as to achieve the intention of the Parties without illegality. Alternatively, at the absolute discretion of the Supplier, such a provision may be severed from these Terms and Conditions and the remaining provisions shall remain in full force and effect.

21. **WAIVER AND VARIATION:** A failure by either Party to enforce any of these Terms and Conditions shall not constitute a waiver and shall not prevent that Party from subsequently enforcing any of these Terms and Conditions. These Terms and Conditions shall not be varied unless such variation is agreed by the Parties in writing.

22. **JURISDICTION:** The contract shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the jurisdiction of the courts of England and Wales.