

Terms and Conditions of Trading

With Effect from 01-02-2010

1. Effect of Conditions

These conditions of sale shall apply to all contracts made between Simtek UK Ltd ("THE SELLER") and any purchaser ("the Customer") of THE SELLER's products ("the Goods") or of THE SELLER's services ("the Services"). The Customer agrees that any other conditions which appear or are referred to on any document coming from the Customer shall not apply to any contracts with THE SELLER.

2. Contract Terms and Variations

These conditions of sale are considered by THE SELLER to be fair and reasonable and THE SELLER's prices are based upon contracts made on these conditions. The Customer will be deemed to have accepted that these conditions are fair and reasonable unless the Customer notifies THE SELLER in writing to the contrary before any contract is made. No alteration to these conditions shall be binding on THE SELLER unless agreed in writing by THE SELLER. THE SELLER reserves the right to amend or change the terms of business, including charges for goods and fee rates for services, by giving one month's notice in writing.

3. Delivery and Completion of Services

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

3.2 Any date quoted for delivery of goods or completion of the Services is given in good faith but is not guaranteed and does not form a term or condition of contract. THE SELLER will endeavour to comply with any such date, but will not be liable for any failure from whatever cause to meet a date.

3.3 THE SELLER will not be liable to the Customer if due to circumstances outside its control it is prevented from performing any of its obligations under any contract.

4. Provision of Services on a Customer's Site

4.1 THE SELLER will provide support and services on the Customer's site where this is requested and agreed.

4.2 THE SELLER reserves the right to delegate any specialised services needed by the Customer to such employees, consultants or associates, as it considers appropriate. When working on the Customer's site, they are carrying out the instructions of the Customer (although remaining an employee or associate of THE SELLER) and the Customer hereby agrees to indemnify THE SELLER against all claims and expenses for which THE SELLER and the employee or associate may become liable by reason of the acts or omissions of THE SELLER's employee or associate during this period.

4.3 Where THE SELLER agrees to provide services on site, the Customer agrees to pay a minimum of three hours work at the current hourly rates in force. In addition, the Customer agrees to pay the costs associated with travelling. Travel in a vehicle is charged at £30.00 per hour and includes fuel.

Other travel (e.g. trains, air travel and accommodation) is charged at cost.

4.4 The Customer agrees not to solicit, or make an offer to, or permit the employment of, or hire as an independent consultant, associate or supplier during the currency of the period services are being provided, or within 12 months of its termination, any person concerned with the provision of goods and services from THE SELLER. If at the Customer's request, this condition is waived, a sum of £15,000 plus VAT will immediately become payable to THE SELLER.

5. Invoices and Terms for Payment

5.1 Unless the Customer notifies THE SELLER in writing of any query or objection to any invoice within seven days from the date of that invoice, the Customer shall be deemed to accept that the invoice is correct in all respects.

5.2 The Customer shall pay the price of the Goods or Services within thirty days from the date of THE SELLER's invoice. In the case of Goods payment shall be made even though delivery may not have taken place and property in the Goods may not have passed to the Customer. The time of payment of the price shall be of the essence of the contract.

5.3 The Customer shall have no right of set-off and a claim or counter-claim by the Customer against THE SELLER shall not be a reason for deferring or withholding payment of sums due to THE SELLER.

5.4 If the Customer fails to make payment by the due date then, without prejudice to any other right or remedy available to THE SELLER, THE SELLER shall be entitled to:-

5.4.1 cancel the contract or suspend any further deliveries or services for the Customer;

5.4.2 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 Customer and THE SELLER) as THE SELLER may think fit notwithstanding any purported appropriation by the Customer; and

5.4.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above Barclays Bank PLC Base Rate from time to time, until payment in full is made, a part of a month being treated as a full month for the purpose of calculating interest.

6. Risk/Passing of Property in the Goods

6.1 Property in the Goods shall remain in THE SELLER until all moneys due from the Customer to THE SELLER (upon whatever grounds and however such liability has arisen) have been paid or until the Customer re-sells the Goods to a third party in the usual course of the Customer's business.

6.2 The Goods shall be at the risk of the Customer from the time of delivery.

6.3 Until property in the Goods has passed from THE SELLER:-

6.3.1 the Customer shall take responsibility for any loss or damage and shall insure the Goods, and all other Goods of THE SELLER as shall be in the Customer's possession, to their invoice value;

6.3.2 the Customer shall ensure that after the Goods have been delivered or until they have been incorporated in other products or re-sold in the ordinary course of the Customer's business, the Goods shall be stored or otherwise identified in such a way as to show that they still remain the property of THE SELLER; and

6.3.3 the Customer shall not mortgage, charge or dispose of the Goods (otherwise than by incorporating them in other products or re-selling them in the ordinary course of the Customer's business) without the written consent of THE SELLER.

6.4 Any Goods sold by THE SELLER and by arrangement held by THE SELLER on behalf of the Customer are so held at the sole risk of the Customer, who indemnifies THE SELLER against any loss or damage to them, however arising.

7. Warranties and Liability

7.1 Subject to the conditions set out below THE SELLER warrants that the Goods and Services will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of six months from delivery.

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 or Services arising from any drawing, design or specification supplied by the Customer;

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 or alterations 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 parts, materials or equipment not manufactured by THE SELLER in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to THE SELLER.

7.3 Subject as expressly provided in these conditions, and except where the customer is 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.

7.4 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 Buyer are not affected by these Conditions.

7.5 Any claim by the Customer which is based on any defect in the Services or any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified to THE SELLER within 7 days from the date of completion of the Services or delivery of the Goods or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify THE SELLER accordingly, the Customer shall not be entitled to reject the Goods or Services and THE SELLER 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 the Services had been provided in accordance with the Contract.

7.6 Where any valid claim in respect of:-

7.6.1 any of the Goods which is based on any defect in the quality or condition of the Goods or failure to meet specification; or

7.6.2 any of the Services which is based on any defect in the Services or their failure to meet specification is notified to THE SELLER in accordance with these conditions THE SELLER shall be entitled to replace the Goods (or the part in question) or carry out the Services again free of charge, or at THE SELLER's sole discretion, refund to the Customer the price of the Goods or Services (or a proportionate part of the price), but THE SELLER shall have no further liability to the Customer.

7.7 Except in respect of death or personal injury caused by THE SELLER's negligence, THE SELLER shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of any contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), 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 or their use or resale by the Buyer or the supply of the Services and the entire liability of THE SELLER under or in connection with any contract shall not exceed the price of the Goods or Services.

7.8 The liability of THE SELLER for any loss or damage caused to any motor vehicle belonging to the Customer (and whether caused by the negligence of THE SELLER, its employees or agents) whilst such vehicle is in the possession of THE SELLER shall not exceed £50,000 or such other sum as THE SELLER may agree with the Customer in writing.

8. THE SELLER's Right to Re-Possess Goods

8.1 If the Customer defaults in making any payment to THE SELLER in respect of any liability owed by the Customer to THE SELLER after the due date for such payment, or if the Customer deals with the Goods in any way (other than permitted above) adverse to the title of THE SELLER, or has a receiving order made against him, or is made bankrupt, or (where the Customer is a limited company) enters into liquidation, or if an administrator or a receiver is appointed over the whole or any part of the Customer's assets or undertaking, or if the Goods are seized under any execution or distress or other form of legal process:-

8.1.1 any existing contract between the Customer and THE SELLER shall automatically determine (but without prejudice to any pre-existing claim which THE SELLER may have under these conditions against the Customer) and;

8.1.2 the Customer shall cease to be in possession with the consent of THE SELLER of the Goods and of all other goods, being the property of THE SELLER which are at that time in the Customer's possession, custody or control, and;

8.1.3 THE SELLER shall be entitled to enter any premises of the Customer and recover immediate possession of all goods which are the property of THE SELLER and shall not be liable for any damage or loss reasonably occasioned to any other property owned by the Customer to which such goods have been attached during the course of removing such goods and retaking possession of them.

8.2 For the purpose of clause 9.1 above all goods manufactured or supplied by THE SELLER and bearing THE SELLER's name which are in the Customer's possession, custody or control at the time when the right of THE SELLER to repossession arises under that sub-clause shall be deemed to be goods supplied to the Customer by THE SELLER in which property has not passed to the Customer unless the contrary is proved.

9. Copyright

The property and any copyright or other intellectual property rights in any design, plan, drawing or other document provided by THE SELLER in the course of supplying the Goods or Services shall belong to THE SELLER.

10. Governing Law and Jurisdiction

All contracts to which these conditions of sale apply, no matter where concluded, will be subject to English Law and any disputes will be resolved by the English Courts.