

# Nanosoft Tech Limited Conditions of Sale

## 1. DEFINITIONS

In these Conditions of Sale:-

"The Seller" means Nanosoft Limited.

"The Buyer" means the person who buys or agrees to buy the goods from the Seller.

"The Goods" means the goods which the Seller is to supply in accordance with these Conditions of Sale. Any reference to "the Goods" shall, where appropriate, include a reference to part of them.

## 2. TERMS OF SALE

2.1 These Conditions of Sale form the whole agreement between the Seller and the Buyer and shall not be removed or varied in any way. No other express terms, written or oral, shall be incorporated into the contract.

2.2 These Conditions of Sale shall override any other terms which the Buyer may subsequently seek to impose.

2.3 The Seller's sales representatives are not authorised to do any of the following things on behalf of the Seller:-

2.3.1 Remove or vary any of these terms or introduce any other terms, written or oral, into the contract.

2.3.2 Make any representation, agree any condition or enter into any collateral contract.

2.3.3 Accept any offer or counter-offer made by the Buyer.

## 3. QUOTATIONS

The Seller's quotation is based upon the information supplied by the Buyer before the quotation is given. Where any subsequent information is submitted which would involve a material alteration in specification or method of manufacture of the Goods, the Seller reserves the right at its option either to amend the quotation to cover any additional costs arising from such alteration or to rescind the contract. If the Seller rescinds in these circumstances the Buyer shall have no claim against the Seller but the Seller shall retain its other rights and remedies.

## 4. THE PRICE

4.1 The price of the Goods is the price stated in the Seller's quotation or such other price as is expressly agreed by the Seller and the Buyer. Any quotations given by the Seller are valid for 30 days only.

4.2 In the event of the price not being fixed by clause 4.1, the price is the price listed in the Seller's published price list current at the date when the contract is made. However, where at any time before delivery of the Goods:-

4.2.1 There is an increase in the cost of materials or labour; or

4.2.2 There are currency fluctuations increasing the cost of materials; or

4.2.3 There is an increase in the Seller's overhead expenses. The Seller may adjust the price accordingly.

4.3 Where the price for the Goods is made payable in a currency other than pounds sterling and during the period between the Seller's quotation of the price in that currency and payment by the Buyer a change occurs in the official rate of exchange between the foreign currency and the pound sterling then (without prejudice to the provision for the price escalation herein before contained) the price shall be adjusted to such amount in the foreign currency as is equivalent at the new official rate of exchange to the sum in pounds sterling which was equivalent at the previous official rate of exchange to the price quoted.

4.4 The price of the Goods in the Seller's quotation does not unless otherwise stated on the quotation include freight/postage and packing all of which will be charged for and paid by the Buyer as an addition to the price shown in the quotation.

4.5 The price of the Goods stated in the Seller's quotation and charge for freight/ postage and packing does not include Value Added Tax which will be added to the Invoice at the applicable rate and paid by the Buyer.

## 5. DELIVERY

5.1 Delivery of the Goods shall be by the Seller delivering the Goods to an independent carrier usually chosen by the Seller, for onward transportation to the Buyer, in accordance with the Buyer's delivery instructions.

5.2 If the Buyer refuses to accept the Goods or fails to give the Seller adequate delivery instructions then the Seller may:-

5.2.1 Store the Goods until actual delivery to the Buyer or until the Goods are disposed of under clause 5.2.2. The Buyer shall be liable for the costs of storage and insurance of the Goods under this clause.

5.2.2 Sell the Goods at the best price readily obtainable. The Buyer shall be liable to pay the costs of the sale. Further, if the Goods are sold for less than the price payable by the Buyer, the Buyer shall be liable to pay to the Seller the difference in price.

This does not affect any other right or remedy the Seller may have. 5.3 Any delivery dates stated are approximate only and the Seller is not liable for any delay in delivery of the Goods, however caused. Time of delivery is not of the essence of the contract.

## **6. PAYMENT**

6.1 The Seller may invoice the Buyer for the price of the Goods on or at any time after the Seller delivers the goods to the independent carrier in accordance with clause 5.1.

6.2 Where credit is given, the Buyer must pay the price for the Goods by the end of the month following the month of Delivery of the Goods. The time for payment of the price is of the essence of the contract.

6.3 The Seller reserves the right to suspend deliveries where payment is not received in accordance with 6.2 or in accordance with any alternative arrangements which shall be agreed in writing between the parties. No cash or other discount will be allowed.

6.4 No cash payments in excess of Euro 15,000 or Sterling equivalent shall be accepted.

## **7. CANCELLATION OF ORDERS**

Orders for Goods may not be cancelled or suspended without the Seller's prior written consent. The Seller shall be under no obligation to consent but if the Seller does consent the Buyer agrees to indemnify the Seller against any loss incurred by the Seller wholly or in part by such cancellation or suspension.

## **8. PROPERTY AND RISK**

8.1 Ownership of the Goods remains with the Seller and will not pass to the Buyer until one of the following occurs:-

8.1.1 The Seller is paid for all of the Goods and no other amounts are owed by the Buyer to the Seller in respect of other goods supplied by the Seller.

8.1.2 The Buyer sells the Goods in accordance with this agreement in which case ownership of the Goods will pass to the Buyer immediately before the Goods are delivered to the Buyer's customer.

8.2 The Buyer must store the Goods separately from any other goods until; They become the Buyer's property; or They are delivered to a purchaser from the Buyer.

8.3 If the Buyer is overdue in paying for the Goods or any other goods supplied by the Seller, the Seller may if still the owner of the Goods, recover and resell them. The Seller may enter the Buyer's premises for this purpose. This does not affect any other right of the Seller.

8.4 Until the Buyer has paid the Seller for the Goods and all other goods which the Seller has supplied to the Buyer:-

8.4.1 The Buyer holds the Goods on trust for the Seller.

8.4.2 If the Buyer sells the Goods, the Buyer shall hold the proceeds of sale on trust for the Seller in a separate bank account.

8.4.3 The Seller may trace the proceeds of sale that the Buyer receives into any bank or other account which the Buyer maintains.

8.4.4 If the Buyer sells the Goods, the Seller may, by written demand, require the Buyer to assign to the Seller the Buyer's rights to recover the price from its purchaser.

8.4.5 The Buyer must not assign to any other person any rights arising from a sale of the Goods without the Seller's written consent.

8.5 Risk in the Goods passes to the Buyer when the Seller's independent carrier delivers the goods to the Buyer in accordance with Clause 5.1. However if the Buyer uses his own independent carrier then the Risk in the Goods passes to

the Buyer when the carrier collects the goods from the Seller.

## **9. LIABILITY**

9.1 The Buyer must carefully examine the Goods immediately on delivery of them and must notify the Seller in writing of any short delivery or any defects reasonably discoverable on careful examination. This notification must be received by the Seller within 7 working days commencing with the day of delivery to the Buyer. "Working days" means any day from Monday to Friday (inclusive) which is not (in England and Wales) Christmas ay, Good Friday or a statutory Bank Holiday. In the absence of notification the Seller excludes all liability in respect of any short delivery or any defect which should reasonably have been discovered on careful examination.

9.2 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Seller's negligence). Non-exhaustive illustrations of indirect loss would be:-

9.2.1 Loss of profit;

9.2.2 Loss of contracts;

9.2.3 Damage to the Buyer's property or property of any other person;

9.2.4 Personal injury to the Buyer or any other person, other than that caused by the Seller's negligence.

The Buyer accepts that it is his responsibility to insure against these risks.

9.3 Except in respect of death or personal injury caused by the Seller's negligence, the Seller's total liability for any one claim or for the total of all claims arising from any one act or default of the Seller (whether arising from the Seller's negligence or otherwise) shall not exceed the price of the Goods as defined in clause 4.

9.4 The Seller shall not be liable for any failure to deliver the Goods arising from circumstances outside the Seller's control.

9.4.1 Non-exhaustive illustrations include act of God, war, riots, explosion, abnormal weather conditions, fire, flood, Government action, strikes, lockouts, delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.

9.4.2 If the Seller is prevented from delivering in the above circumstances, it will notify the Buyer of the fact in writing within 10 days commencing with the contractual delivery date.

9.4.3 If the circumstances preventing delivery are still continuing 3 months from and including the date the Seller sends such notice, then either party may give written notice to the other cancelling the contract. Such written notice must be received whilst the circumstances are still continuing.

9.4.4 If the contract is cancelled in this way, the Seller will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount which the Seller is entitled to claim from the Buyer) but the Seller accepts no liability to compensate the Buyer for any further loss or damage caused by the failure to deliver.

## **10. INSOLVENCY**

If the Buyer:-

10.1 Being a Company.

10.1.1 Has a petition for presentation for its winding up; or

10.1.2 Passes a resolution for voluntary winding-up (other than for the purpose of a bona fide amalgamation or reconstruction); or

10.1.3 Enters into a voluntary arrangement with its creditors; or

10.1.4 Becomes subject to an administration order; or

10.1.5 Has a receiver appointed of all or any of its assets; or

10.2 Being an individual or firm,

10.2.1 Becomes bankrupt or insolvent; or

10.2.2 Enters into a voluntary arrangement with creditors;

Then the Seller shall be entitled to treat the contract as being at an end or suspend any further deliveries under the contract. If the Goods have been delivered but not paid for, the price shall become due immediately, regardless of any previous agreement to the contrary.

## **11. SAMPLES**

Notwithstanding that a sample of the goods has been exhibited to and inspected by the Buyer, it is hereby declared that

such sample was so exhibited and inspected solely to enable the Buyer to judge for himself the quality of the bulk and not so as to constitute a sale by sample under the Contract. The Buyer shall take the goods at his own risk as to their corresponding with the said sample or as to their quality, condition or sufficiency for any purpose.

## **12. PATENTS AND TRADE MARKS**

No representation, warranty or indemnity is given by the Seller that the Goods do not infringe any Letters Patent, Trade Marks, Registered Designs or other industrial rights.

## **13. INDEMNITY**

The Buyer shall indemnify the Seller in respect of all damage or injury occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith for which the Seller may become liable in respect of the Goods sold under this Contract in the event that the damage or injury shall have been occasioned by the negligence of the Buyer or his servants or agents.

## **14. DEFECTS AFTER DELIVERY**

The Seller will make good by repair or at the Seller's option by the supply of a replacement defects which under proper use appear in the goods within a period of 12 calendar months after the Goods have been delivered and arise solely from faulty design, materials or workmanship. Provided always that the defective parts are promptly returned by the Buyer carriage paid to the Seller's works unless otherwise arranged.

## **15. EXCLUSION OF LIABILITY**

Apart from those terms set out above no other terms express or implied, statutory or otherwise form part of this Contract

## **16. SEVERANCE**

16.1 Each of the clauses and sub-clauses in this contract are to be treated as separate and independent.

16.2 If a court finds that any clause or sub-clause in this contract fails the requirements of reasonableness under the Unfair Contract Terms Act 1977, the Seller nevertheless excludes the relevant liability to the extent that the court finds reasonable.

## **17. REJECTION**

The Buyer is not entitled to reject the Goods or any part of them for

- breach of s13 Sale of Goods Act 1979 as amended (description)
- breach of s14 Sale of Goods Act 1979 as amended (satisfactory quality)
- breach of any express terms relating to the description or quality of goods
- any misrepresentation relating to the description and quality of the goods

UNLESS EITHER

- Such breach or misrepresentation devalues the Goods by more than 6%

OR

- The Goods delivered are substantially different in nature from the Contract goods.

If the buyer returns the goods for reasons which are no fault of the Seller, a restocking charge may be levied by the Seller.

## **18. PROPER LAW**

The Contract shall be governed by and read and construed in accordance with the Law of England and Wales.