

## AMWELL SYSTEMS LIMITED TRADING AS TBS AMWELL

### CONDITIONS OF BUSINESS

#### 1 GENERAL

1.1 "Seller" means "Amwell Systems Limited trading as TBS Amwell". "Buyer" means the person firm or company named in the order confirmation acting as principal and not agent.

"Goods" means the Goods specified or referred to in the Order Confirmation and references to the Goods shall where the context so admits include references to any part or single item or replacement.

"Site" means the place specified in the Order Confirmation to which the Goods are to be supplied under the contract.

"Order" means the instruction sent to the Seller for the supply of Goods.

"Order Confirmation" means the order confirmation forwarded by Seller to Buyer.

"The Contract" means the agreement concluded between Seller and Buyer in accordance with and subject to these conditions.

1.2 These conditions shall be incorporated in and govern every offer acceptance and contract for the sale of Goods by the Seller and all other conditions warranties and representations whether made orally or in writing and whether express or implied are hereby excluded.

1.3 Subject to the provisions of clause 3.2 hereof all quotations of price submitted in writing by the Company may be considered firm for 90 days unless amended by the company in writing.

1.4 All Orders are accepted subjected to satisfactory references being supplied by the Buyer if required.

1.5 These conditions shall override any Conditions contained in any order submitted by any Buyer which shall be deemed to have been first refused by the Company before the offer of which these Conditions form part was made.

1.6 The Order shall be subject to the written Order Confirmation by Seller and no contract shall be concluded until such Order Confirmation is given or Buyer's order has otherwise been accepted in writing by Seller.

1.7 Unless otherwise stated in writing by the Seller each order when accepted shall constitute a separate contract between Seller and Buyer.

1.8 This contract is subject and conditional upon the Company being able to obtain credit insurance for the Buyer for the total value of the order, failing which, the company reserves the right to rescind the contract.

1.9 No alteration variation or waiver to the Contract shall be valid unless agreed in writing by an authorised signatory of Seller.

#### 2 SPECIFICATIONS

2.1 Seller reserves the right to make a reasonable charge for all additional work of any kind undertaken at the request of Buyer and the price for which has not been expressly agreed between the parties or contained in the Order Confirmation.

#### 3 PRICE

3.1 The price for the Goods shall be specified or referred to in the Order Confirmation and unless otherwise stated the price shall be delivered Site UK mainland excluding Value Added Tax.

3.2 Notwithstanding anything herein to the contrary the price quoted or referred to in the Quotation may be varied by Seller after the Contract as a result of any increase between the date of the Order Confirmation and delivery where such increase is due to a change in market conditions beyond the reasonable control of Seller. The Term "Market conditions" shall include (but not be limited to) increases in the cost or changes in any relevant exchange rate transport or handling charges the imposition of or amendment in any statute order regulation or by law in respect of any duty tax imposed or the imposition or change in any export or import regulations or requirements.

#### 4 PAYMENT

4.1 Unless otherwise agreed in writing between Seller and Buyer payment shall be made in all respects in accordance with the terms of the Contract.

4.2 Payment for the Goods shall be made in full (including VAT) by Buyer to Seller at or within 30 days following the date of invoice, which may be submitted on or at any time after delivery. The Buyer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

4.3 The whole of the price shall not be treated as paid until any cheque or other instrument of payment for the whole amount thereof given by or on behalf of the customer has been met on presentation or otherwise honoured in accordance with its terms.

4.4 If the Buyer fails to pay to the Seller any amount on the due date:

4.4.1 The Seller shall have the right to cancel any contract made with the Buyer and/to suspend or continue delivery of goods and materials at the Seller's options without prejudice to the Seller's right to recover damages for any loss sustained by it.

4.4.2 The outstanding sum shall carry interest at the rate of 2% per month.

4.4.3 The whole of the balance of the price then outstanding shall become due and payable forthwith.

4.4.4 The Seller reserves the right to make a storage charge at its rates current from time to time, in addition to all other rights which it may have in respect of the default in payment.

4.4.5 The Seller may repossess any goods in respect of which payment is overdue and thereafter resell the same, and for this purpose the Buyer hereby grants an irrevocable right and license to the Seller and its servants and agents to enter upon all or any of its premises with or without vehicles during the normal business hours; this right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any other rights of Seller.

4.4.6 The Seller may without prejudice to any of its other rights stop any goods in transit.

4.4.7 The Seller shall have general lien on all goods and property belonging to the Buyer and such lien shall be exercisable in respect of all sums lawfully due from the custom to the Seller, the Seller shall be entitled on the expiration of fourteen days' notice to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds toward such debt.

## 5 INSPECTION AND STORAGE OF GOODS

5.1 Goods should be inspected upon receipt and any claim or damage or shortage in respect of the consignment will only be entertained if made to Seller within 48 hours of delivery and confirmed in writing within seven days of delivery. Seller's liability for defective Goods will be limited to replace such defective goods pursuant to clause 8.5 hereof and no claims shall be considered for labour or other charges in connection with installation or removal. Returned Goods will not be accepted unless prior agreement with Seller. Any goods returned to Seller for credit because of Buyer's error including return of duplicate orders will only be credited at actual resale value obtained by Seller.

5.2 The Goods shall at all times be kept by Buyer in accordance with Seller's specifications and Seller's Warranty as to condition of the Goods shall not apply if and to the extent that Buyer fails to comply with this condition.

5.3 Seller shall have no liability to Buyer in respect of:

5.3.1 Any use by Buyer or third party of the Goods in combination with anything not so supplied under the Contract or

5.3.2 Any modification, alteration or adjustment carried out by Buyer or any third party to the Goods or

5.3.3 Any use which results from Seller's compliance with any design specification or idea provided by Buyer or any third party on its behalf.

## 6 DELIVERY

6.1 All delivery and other dates and periods quoted by Seller are reasonable estimates only and accordingly Seller shall not be liable for any loss or damage (including any

consequential loss or damage) resulting from any failure to deliver on any particular date or dates. Dates given for delivery are not of the essence.

6.2 All delivery dates and period quoted for delivery shall commence on the date of Sellers Order Confirmation or (if later) when Seller receives from Buyer any further information which it may require to proceed with the performance of the Contract or (if later) upon receipt of any payments to be made by Buyer prior to schedule or timetable (if any) specified or referred to in the Order Confirmation and to give all necessary instructions for delivery accordingly.

6.3 Delivery shall be to Site UK mainland and for the purpose of delivery the International Commercial Terms ("INCO Terms") shall apply except to the extent that they are inconsistent with the provisions hereof.

6.4 If the Buyer refuses or fails to take on delivery of Goods tendered in accordance with the contract the Company shall be entitled to immediate payment in full for the Goods so tendered and to store the same at the risk of the Buyer. The Buyer shall in addition to the purchase price pay all costs of such storage and any additional costs incurred as a result of such refusal or failure. The Seller shall be entitled after the expiration of three months from the date upon which the price became payable to dispose of the Goods in such manner as the Seller may determine.

## 7 PASSING OF PROPERTY

7.1 The risk in the Goods shall pass on delivery to Buyer but the property in the Goods shall not pass to the Buyer until all sums due and payable by Buyer to Seller in respect thereof and in respect of all other goods agreed to be sold by the Seller to the Buyer for which payment is then due shall have been paid. Until such time:

7.1.1 Buyer shall be in possession of the Goods as bailee and fiduciary agent for Seller and if so required shall store the Goods separately from those of the Buyer's own Goods and in such a fashion as to be readily identifiable by Seller.

7.1.2 Buyer is hereby licensed to resell the Goods but such right may be revoked if Buyer fails to make any payments when due and in the event of such revocation Seller shall be entitled to demand payment which is due and without prejudice to such right to recover or resell the Goods or any of them and may enter upon Buyers premises by its servants or agents for that purpose.

7.1.3 Buyer shall hold proceeds with its own monies or in any Bank Account with other monies but shall ensure that all such proceeds of sale are separate and identifiable. Moreover Buyer shall immediately on receipt of the proceeds of sale remit to Seller the full price including VAT of the Goods as supplied to Buyer.

7.1.4 If Buyer shall not receive the proceeds of any such sales on the due date it shall within seven days notify Seller and if called upon to assign to Seller any claim of any nature whatsoever against the person or persons to whom it has supplied the Goods.

7.1.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8 WARRANTY

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and for such period as shall be notified by the Seller to the Buyer on its production information.

8.2 The above warranty is given by the Seller subject to following conditions:

8.2.1 The Seller shall be under no liability to respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.

8.2.2 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 alteration or repair of the Goods without the Seller's approval;

8.2.3 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;

8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefits of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in 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.

8.4 Where the buyer deals as a consumer (within the meaning of the Unfair Contract Terms Act 1977), the statutory rights of the Buyer are not affected by the Conditions.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods 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) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty condition or other terms, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss or profit or otherwise), cost, expenses or other claims for consequential compensation whatsoever (and 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 Goods or their use or resale by the Buyer, except as expressly provided in these conditions.

8.7 The Buyer assumes all risk of loss arising from improperly applying non-defective Goods.

8.8 Subject to these conditions, the Seller's total liability to the Buyer under or connected with these conditions shall not exceed 125% of the price payable for the goods that are the subject of the claim, with an upper limit in any event of £2 million for any one event or series of connected events. These limits are based on the Seller's insurance cover and ability to compensate. The limits may be increased on request but shall be subject to the Seller obtaining suitable cover and may require an adjustment to the price payable for the Goods to reflect any increased premiums.

The Seller shall not be liable to the Buyer for any indirect or consequential loss, any loss of profit, any loss of business, any loss of revenue or any depletion of goodwill.

## 9 TOLERANCES

9.1 The description of the Goods shall be as set out in the Seller's quotation, if any.

All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained on the Seller's website or in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods supplied in them. They will not form part of the Contract.

9.2 Unless otherwise agreed by the Seller in writing, if the Seller delivers to the Buyer Goods which have dimensions within 5mm of the dimensions agreed by the Seller for the Goods, the Buyer shall not be entitled to object or to reject the Goods or any of them.

9.3 Where the Seller agrees to manufacture Goods to the exact dimensions set out in the Seller's acknowledgement of order, the dimensions will conform to the tolerances ruling under BS4965, copies of which can be obtained from the British Standards Institution.

9.4 Where the decorative laminates and core materials used to produce the Goods permit, the Goods will comply generally with the quality specification of BS4965. The Seller does not warrant that decorative laminates will either adhere to a particular shade of colour nor be consistent with a particular colour or pattern. The Seller shall not be liable for the distortion or bowing of Goods due to the Buyer's transport, storage, site or installation conditions.

9.5 The Buyer acknowledges that the Goods are intended for use in a temperate climate only, unless the Seller has otherwise agreed in writing.

9.6 The Buyer shall indemnify and keep indemnified the Seller against all liabilities, claims, costs, damages and expenses (including but not limited to legal costs and expenses)

incurred or sustained by the Seller as a result of the Seller supplying Goods to the Buyer to the extent that such liabilities, claims, costs, damages and expenses arise as a result of the Buyer supplying Goods in accordance with any specification supplied to the Seller by the Buyer.

## 10 INTELLECTUAL PROPERTY

10.1 All intellectual property rights in the Goods shall remain the exclusive property of the Seller or its licensors, unless otherwise agreed in writing by the Seller. Subject to the Buyer paying all monies due to the Seller under the terms of the Contract and any other contract between the Seller and the Buyer, the Seller hereby grants to the Buyer a non-exclusive, royalty free, non-transferable license of such intellectual property rights for the purpose of utilising the Goods in its normal course of business.

## 11 FORCE MAJEURE

11.1 Seller shall not be liable to Buyer under these conditions or otherwise to the extent that the fulfilment of its obligation hereunder has been prevented hindered delayed or otherwise prejudiced by an act event occurrence or circumstance or force majeure as hereafter defined. For the purpose of this condition "Force majeure" shall mean any act, event, occurrence or circumstance beyond the reasonable control of the Seller and shall include (without restricting the generality of the foregoing) war (whether declared or not): rebellion; riot; insurrection; national or international emergency; civil commotions; fire; flooding; explosion; breakdown of machinery or equipment; labour disturbances; strikes; lock outs or other exchange; the introduction or enactment of legislation by governments restriction or prohibiting the manufacturing supply or sale of Goods similar to the Goods; restrictions or shortages of fuel power; equipment; material supplies or labour; destruction or loss or damage due to natural causes of any kind whatsoever. Seller shall be entitled upon any such act, event occurrence or circumstances to rescind the Contract and all its obligations towards Buyer there under and Buyer shall not be entitled to receive any compensation payment or damage as a result thereof. The provisions of this shall also apply to any plant components, part materials or other items delayed or not delivered by any supplier to the Seller or any sub-contractor for Seller if the delay or no delivery has been caused by any of the for mentioned act, events, occurrences or circumstances.

11.2 Where the act event occurrence or circumstances of force majeure referred to above continues for a period of six months then subject to the payments to Seller by Buyer of an amount equal to the costs incurred by Seller in complying with its obligations under the Contract Buyer shall be entitled to rescind the Contract.

## 12 CONFIDENTIALITY

12.1 Buyer acknowledges the intellectual property rights of Seller in the processes employed by Seller in producing the Goods and all information received or acquired by Buyer at any time whether before during or after performance of the Contract shall be treated by Buyer in confidence and shall not be used or disclosed by Buyer to any third party without the prior written consent of Seller.

12.2 Buyer shall indemnify Seller in full against all or any losses, damages, costs charges and expenses suffered or incurred by Seller as result of any breach of confidentiality or other infringement of the intellectual Property Rights of Seller by Buyer howsoever occasioned.

## 13 WAIVER

13.1 No forbearance or indulgence shown or granted by Seller or Buyer in any regard whatsoever shall constitute a waiver of any covenant or condition to be performed by Buyer or in any way affect, diminish, restrict or prejudice the rights, and powers of Seller hereunder.

13.2 All rights given to Seller under these conditions shall be independent and not mutually exclusive except to the extent that they have been expressly excluded.

## 14 HEADINGS

14.1 The headings included in these conditions are for ease of reference only and shall not be deemed to form part or otherwise be used to interpret these conditions.

## 15 LAW AND JURISDICTION

15.1 The validity construction and performance of the Contract and these conditions shall be governed by the Laws of England and each of the parties hereby agrees to submit to the jurisdiction of the English Courts.

## 16 LANGUAGE

16.1 Where these Conditions are translated into another language then in the event of any dispute or conflict as to their meaning or interpretation for the English version shall prevail.

## 17 CANCELLATION

17.1 Orders accepted by the Seller can be cancelled only with the written consent of the Seller, such consent to be in the Seller's absolute discretion and then only upon payment or reasonable collection charges which shall include expenses already incurred and account of commitments made by the Seller.

17.2 Such charges as set out in 17.1 will include but will not be restricted to the following:-

- (i) In respect of partial / entire orders cancelled prior to CAD drawing production, the seller reserves the right to make a 10% charge in respect of the total value of the order.
- (ii) In respect of partial / entire orders cancelled after CAD drawings have been completed, the seller reserves the right to make a 20% charge in respect of the total value of the order.
- (iii) In respect of partial / entire orders cancelled after approval to the manufacturer has been obtained, the seller reserves the right to make a 100% charge on the total value of the order.
- (iv) In respect of re-stocking fees for any standard product ordered, the seller reserves the right to make a 20% charge.

## 18 DIVISIBILITY

18.1 This contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect or default in delivery of any other instalment.