



# OP-TEC SYSTEMS LTD – Terms and Conditions

## 1 DEFINITIONS

1.1 In these terms and conditions:

"the Seller" means Op-tec Systems Ltd

"the Buyer" means the purchaser of goods and/or services from the Seller

"Contract" means the contract on these terms and conditions for the sale by the Seller to the Buyer of the Goods

"Goods" means goods and services forming the subject of the Contract

1.2 These Terms and Conditions together with any special conditions agreed between the Buyer and Seller in writing shall be incorporated in the contracts between the parties save where expressly excluded and shall constitute the entire contract.

1.3 These Terms and Conditions of Sale supersede all other terms and conditions, representations or undertakings made by the Buyer or the Seller, and for the avoidance of doubt in the event of any attempt by the Buyer to seek or to rely on their own Terms and Conditions if there are inconsistencies in the Terms and Conditions of the Buyer and these Terms and conditions these Terms and Conditions shall prevail unless the contrary is agreed in writing by the Seller.

## 2 PRICE

2.1 The price shall be that ruling according to the Quotation or the Order Confirmation document as applicable and in force at the date of the delivery of the Goods unless otherwise agreed in writing by the Seller and the Buyer.

2.2 The Buyer shall be liable for any increase in price or expenses incurred by the Seller arising out of any delay caused by the Buyer.

2.3 If the Buyer has a credit account with the Seller the Seller may withdraw it or reduce the Buyers credit limit or change the payment terms under the credit arrangement at any time.

## 3 PAYMENT

3.1 Payment is due within 30 days of the date of the Seller's invoice to the Buyer.

3.2 The Seller reserves the right to charge interest at 5% above the Bank of England rate on all sums not paid by the due date.

3.3 If the Buyer fails to pay on the due date then the Seller may (without prejudice to other rights) suspend further deliveries until payment has been made and/or exercise its rights pursuant to clause 5.5

3.4 The Buyer is not entitled to withhold payment of all or any of the purchase price while any claim in respect to the Goods is under investigation.

3.5 No deduction from the purchase price of Goods shall be made by the Buyer against any hold back or counterclaim however arising.

3.6 The agreed terms of payment must be strictly observed. If any sum due thereunder is not paid in full by the due date, or, if before such date the Buyer is unable or unwilling to make such payment in full, then the Seller shall have the right to terminate the Contract forthwith whereupon clause 10.3 shall apply.

3.7 In the event of the Buyer's insolvency all sums payable by the Buyer to the Seller shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary.

3.8 The Seller shall have a general lien on all goods for all sums due at any time from the Buyer. The Seller shall be entitled to sell the goods at the expense of the Buyer and to use the net proceeds thereof in or towards payments of such sums.

3.9 The Seller reserves the right to issue an invoice to the Buyer regardless of delivery of the Goods to the Buyer where the Buyer has instructed the Seller to deliver the Goods at a later date than otherwise previously stated to the Seller. Payment of any invoices issued by the Seller to the Buyer invoking this clause will also be subject to clause 3.1.

## 4 DELIVERY

4.1 The place and date for delivery are as agreed between the Buyer and Seller.

4.2 The date for delivery is the Seller's best estimate based on present information. The Seller shall not be liable for delay in delivery in any circumstances whatsoever (even if caused by the negligence of the Seller or its agents), nor for any loss, damage or expense which the Buyer may suffer by reason of such delay. For the avoidance of doubt in this Contract time is not of the essence with regard to the date for delivery.

4.3 In the case of damage in transit, notice of damage or breakage shall be sent in writing by the Buyer both to the Seller and the carrier (if any) within three days of receipt of the Goods followed up with a written claim setting out full details of the damage or breakage within seven days of receipt of the Goods.

4.4 In the case of loss in transit or delay in delivery, notice in writing shall be sent by the Buyer both to the Seller and to the carrier (if any) within seven days of the date of invoice followed up with a written claim within 14 days of the date of the invoice.

4.5 When deliveries are to be made direct to site the Buyer will warrant to the Seller that the site will be readily accessible to normal road transport at the date and time of delivery, and that a representative of the Buyer will be present to accept delivery, and that suitable means of unloading the Goods will be available on site, unless alternative arrangements have been confirmed in writing between the Buyer and Seller in advance of the delivery.

4.6 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery, the Seller shall be entitled to arrange storage at its own premises or elsewhere at the Buyer's risk and cost.

## 5 PROPERTY AND RISK

5.1 Property in the Goods shall not pass to the Buyer until the Buyer has paid the whole of the price of the Goods in full to the Seller.

5.2 The risk shall pass to the Buyer as soon as one of the following events occurs:

i. The Buyer pays the price in full.

ii. The Buyer takes delivery of the Goods.

5.3 In particular, and without prejudice to clause 7.2, if the Goods or any item thereof are lost, damaged or destroyed from any cause whatsoever then the Buyer shall pay the reasonable cost of repairing or replacing the Goods and shall also remain liable to pay the price of the Goods in full.

5.4 Until such time as title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties. The Buyer shall properly store, protect, insure and identify the Goods as the Seller's property. Until that time, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

5.5 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller. If the Buyer fails to do so, the Seller is entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

5.6 Title in all equipment which the Seller takes in for refurbishment and repair (whilst monies in respect of the same remain outstanding) vest in the Seller. Title in the equipment or reconditioned items substituted for them shall only vest in the Buyer in accordance with terms of this clause 5.

## 6 CANCELLATIONS

6.1 Orders/part orders cannot be cancelled without the prior agreement and written consent of the Seller.

6.2 Returned materials must be in a new and unused condition in the original packing where applicable. Credit for returned materials will be subject to a restocking charge at the discretion of the Seller.

## 7 LIMITATION OF LIABILITY

7.1 Except as otherwise expressly mentioned in these Conditions the Seller shall have no liability whatsoever to the Buyer in respect of any loss or damage (whether direct, indirect or consequential) suffered by the Buyer whether in contract or tort or otherwise, whether for loss or damage to property or for death or personal injury (except, in the case of death or personal injury, where the same is due to the negligence of the Supplier, its employees or agents) or otherwise in respect of any Goods supplied or work done by the Seller. The Buyer shall indemnify the Seller against any claim made against the Seller by a third party arising out of any goods supplied or work done for the Buyer.

7.2 No forbearance or indulgence by the Seller shown or granted to a Buyer, whether in respect of these Conditions or otherwise, shall in any way affect or prejudice the rights of the Seller against the Buyer or be taken as a waiver of any of the Conditions.

## 8 INDEMNITY

8.1 The Buyer will indemnify the Seller against any claims by any third party arising directly or indirectly out of the Contract.

## 9 VARIATIONS

9.1 The Seller agrees to carry out any reasonable variations to the previously agreed specifications and drawings which is requested in writing by the Buyer or his agent and accepted in writing by the Seller.

9.2 When specified or agreed materials are not readily available to the Seller, in addition to its rights under clause 12, shall be entitled to substitute other materials without prior notice to the Buyer.

## 10 WARRANTY

10.1 Each party hereto warrants and represents to each other that it has authority, power and capacity to enter into this contract and that all necessary actions have been taken to enable it lawfully to enter into this Contract.

10.2 The Seller warrants to the Buyer that for a period of either 12 months from the day of completion of the installation of which the Goods supplied for a part, or of 15 months from the date of supply of the Goods, whichever is the shorter, that the Seller will replace or repair free of charge any part or parts of the Goods which are proved to the Sellers to be defective due to faults in the material or workmanship of the Goods.

10.3 None of the above warranties shall apply to:

i) Any defect which in the opinion of the Seller arises by reason of the misuse, misapplication or neglect of the Goods.

ii) Any defect not immediately notified to the Seller.

iii) Any equipment which in the opinion of the Seller has been improperly applied, installed, serviced, repaired or altered.

iv) Goods not of the Seller's manufacture, in which case the Buyer is entitled only to such benefit as the Seller may receive under any warranty given in respect thereof.

v) Any equipment of which the service has been carried out by anyone other than the Seller.

vi) Any equipment installed outside mainland Great Britain.

10.4 All labour, fitting and carriage costs incurred in replacement under clause 10.2 will be borne by the Buyer.

10.5 The Seller shall under no liability for any personal, consequential, product or other loss or damage however caused as a result of any Goods supplied or work done being defective.

10.6 The Seller shall not be bound by any oral warranty statement or representation given or made on its behalf unless confirmed in writing.

## 11 TECHNICAL SPECIFICATIONS

11.1 Any technical drawings, prints and specifications supplied by the Seller in connection with a Quotation or Contract shall remain the property of the Seller unless otherwise expressly agreed in writing signed on behalf of the Seller by a Director. The Buyer shall not copy them without the consent of the Seller, and shall comply with the Seller's reasonable requirements as to their use and return.

11.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer.

11.3 The Seller reserves the right to make without notice to the Buyer any improvement or alteration in the material, specification, dimensions or design of the Goods which it thinks reasonable or desirable, or which it is required to make by law, and such improvement or alteration shall not affect the validity of the contract.

11.4 Any information, photographs, technical data and other description contained in catalogues or other documents published by the Seller is intended for guidance only and Goods supplied will not necessarily correspond in all respects with the literature. The Seller accepts no liability for errors in, or misinterpretation of any such literature.

## 12 PATENTS

12.1 The Seller gives no indemnity in respect of any actual or alleged infringement of the patents, registered designs, design copyright or any other industrial property right relating to the Goods.

## 13 TRADE NAMES AND TRADE MARKS

13.1 The Buyer undertakes not to:

i) Hold himself out, in any circumstances, or any manner whatsoever, as having authority to sell, service or deal with the Goods as agent or other authorised representative of the Seller.

ii) Alter, remove or tamper with any Trade Marks of the Seller, numbers or other means of identification used on in relation to the Goods.

iii) Use any trademarks or trade names so resembling any trade mark or trade name of the Seller as to cause confusion or deception.

13.2 In particular and without prejudice to clause 14.1 the Buyer undertakes not to use and trade name or trade mark of the Buyer on goods, premises, vehicles, stationary, sales literature or in any way whatsoever.

13.3 The Buyer's undertakings under this clause are Conditions of Contract so that breach thereof shall entitle the Seller to terminate the Contract and recover damages in respect of all loss and expense occasioned thereby.

13.4 Notwithstanding clause 1.3 of these conditions no document purporting to authorise the Buyer to do any act which would otherwise be a breach of Their undertakings under this clause on behalf of the Seller shall be binding on the Seller unless it is a formal licence agreement bearing the Seller's corporate seal.

## 14 TERMINATION OF THE CONTRACT

14.1 The Contract shall automatically terminate if the Buyer (being an individual, or in the case of a firm, any member thereof) commits any act of bankruptcy, or has a receiving order made against him, or has any process of distress or execution levied upon his goods, or makes any arrangement with his creditors, before the property in the Goods has passed to the Buyer hereunder.

14.2 If the Buyer (being a limited company) has a Receiver appointed of its assets, or goes into liquidation whether compulsory or voluntary, or ceases to carry on business, or if the Seller reasonably considers that any of the said events is about to occur, before the property in the Goods has passed to the Buyer, then the Seller may terminate the Contract forthwith by notice in writing.

14.3 In the event of termination under sub clauses 14.1 or 14.2 above the Buyer shall cease to have any interest in, or right to possession of, the Goods and the Seller for the purpose of exercising its rights as unpaid Seller and under this Contract shall be entitled to enter any premises where the Goods are situated, and to remove them at the Buyers expense.

## 15 WAIVER

15.1 Failure by the Buyer or Seller to enforce any of these Terms and Conditions shall not constitute a waiver of its rights thereunder.

## 16 FORCE MAJEURE

16.1 The Seller shall not be liable if manufacture or delivery is prevented, hindered or delayed by reason of strikes, or any other actual or threatened industrial action, or difficulty in obtaining labour, plant, materials or bought in components, or by breakdown of plant or machinery, or by interruption of power supplies, or by fire, or by legal action by a third party (whether or not any of the aforesaid are caused by the negligence of the Seller or its agents) or by reason of any circumstances outside the Seller's control which shall include but not be limited to all cases of force majeure.

16.2 If the delivery of the full quantity due hereunder is prevented, hindered or delayed by reason of any circumstances within sub clause 10.1 for a period of more than 8 weeks after the agreed delivery date then the contract for any part of the Goods remaining undelivered is deemed to be terminated without liability or obligation on the Buyer or Seller.

## 17 COMPLIANCE WITH INSTRUCTIONS & SAFETY

17.1 The Buyer will ensure that all Goods are installed, maintained and used strictly in accordance with the appropriate instructions and recommendations provided by the Seller for the safety of users and third parties and also to prevent damage to the Goods.

17.2 The Buyer will comply with all relevant legal requirements, regulations and good industry practices relating to the handling, processing, storing and transporting of refrigerants.

## 18 DATA PROTECTION ACT

18.1 The Seller and any of its subsidiaries and shareholders and their respective associated companies will use the information the Buyer provides to the Seller in the course of entering into contract together with other information that is obtained about the Buyer from other parties such as (but not limited to) credit reference agencies for the purposes of credit checking, customer profiling, cross selling and improving services. We may disclose your information to any of their service providers and agents or each other for these purposes.

## 19 RIGHTS OF THIRD PARTIES

19.1 The parties to the contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 20 JURISDICTION

20.1 The law governing the Contract shall be the law of England.

20.2 Any dispute arising out of, or in connection with, the Contract shall be submitted to the jurisdiction of the English Courts, except that the Seller may elect and be entitled to proceed in Scotland or Northern Ireland or any foreign jurisdiction whatever proceedings may lawfully be brought against the Buyer.

## 21 NOTICES

21.1 Any notice may be served by either party on the other by leaving it at, or sending it by post to, the address of that party contained in the contract. Such notice shall be deemed to be served when it would be received by either party in the normal course of transmission of post or otherwise.