

Terms and Conditions of Sale

1. These Conditions

(1) In these terms and conditions the word Comcen means Comcen Computer Supplies, the words "the customer" shall mean the person, firm or company purchasing or agreeing to purchase goods or services from Comcen, the words "these conditions" shall mean the terms and conditions of sale set out herein and the word "goods" shall mean all equipment, spare parts, other goods, repairs or services to be provided to the customer by Comcen.

(2) All agreements by which Comcen agrees to supply goods and services to the customer shall be subject only to these conditions notwithstanding any variation or attempted variation of these conditions made by the customer in its order form or otherwise and (save as provided by clause 1 (3) of these conditions) the making of an order by the customer for the goods or services supplied by Comcen shall for all purposes be deemed to be acceptable by the customer of these conditions to the exclusion of any other terms and conditions. Any brochure in which these conditions are incorporated shall constitute an invitation to treat by Comcen and any order placed by the customer which Comcen in its discretion accept in writing or by telephone, fax. No cancellation of an order by the customer shall be valid unless made in writing and accepted by Comcen.

(3) No variation of these conditions is permitted unless expressly accepted in writing by a Director of Comcen.

2. The Goods

(1) Subject to the warranty contained in Clause 6(1), all descriptions, drawings, and particulars relating to the goods in any catalogues, leaflets, brochures, or other documents are for illustrative purpose only and do not form part of the agreement between Comcen and the customer. All representative as to performance of the goods are based on information supplied by the manufacturer of the goods and relate to their performance in normal conditions and when used correctly.

(2) Unless otherwise expressly agreed, goods supplied will be in accordance with manufacturers normal designs and specifications current at the date of manufacture or delivery and the supply by Comcen of goods differing from any contractual or pre-contractual specifications or descriptions shall not be a breach of the agreement between Comcen and the Customer insofar as the goods are of approximately equivalent performance to the goods referred to in such specifications or descriptions.

3. Delivery, Installation, and Risk

(1) Unless otherwise expressly agreed the cost price shown in the current price list of Comcen is exclusive of value added tax and the cost of packaging and carriage which will be charged at Comcen's normal rates.

(2) The time for delivery or installation of the goods is not of the essence. The agreed dates for delivery or installation are estimates only and a failure by Comcen to comply with them shall not be a breach of these conditions.

(3) The goods shall be at the customers risk at the time of delivery or installation, or if the customer has requested that he has arranged the collection of the goods at his risk on the date that Comcen has notified the customer that the goods are ready for collection.

(4) Where the goods are installed by the seller it is the customers responsibility to "make available" all necessary facilities required to undertake installation. The customer is responsible for payment of all licences, permits, way leaves, easements, mains electric power supply conducts sockets and such like as are necessary for the installation of the goods by the agreed date for the commencement of the installation and to provide all the necessary access, information and co-operation to enable the installation to proceed from that date.

(5) The Company reserves the right to make scheduled deliveries each of a part only of the overall amount and value of goods ordered by the buyer. Where any such scheduled delivery is made the goods comprised within each delivery shall be deemed to have been sold and delivered under a separate contract for the sale of the goods the subject of such delivery and will be invoiced separately. The Buyer will pay for the goods delivered in each scheduled delivery without set off, counter claim or deduction in respect of any previous or future scheduled delivery or other goods ordered

(6) The customer is required to inspect the goods on receipt and to notify Comcen of any defects or complaints within 24 hours.

(7) If any payment due to Comcen is overdue for 30 days or if the Customer ceases to trade or enters into any arrangement with its creditors or shall become insolvent or has a receiver or administrative receiver appointed or a petition is presented or a resolution is passed for the winding up of the Customer (if the Customer is a Company) other than for the purpose of a solvent reconstruction or amalgamation previously notified to Comcen, Comcen shall then be deemed entitled (without prejudice to any other rights or remedies available to it) to stop any goods in transit and to cancel any further deliveries.

4. Property in the Goods

(1) Notwithstanding the risk in the goods passed to the Customer in accordance with clause 3(3) of these conditions the goods shall remain the sole and absolute property of Comcen and title to and legal and equitable ownership of the goods shall not pass to the Customer until payment is received by Comcen of all the monies due from the Customer and the Customer acknowledges that until such payment is made in full it is in possession of the goods solely as fiduciary of Comcen.

(2) The customer is licensed by Comcen to use or to agree to sell the goods provided that the entire proceeds of any sale of such goods are held in trust for Comcen and are not mixed with other monies or paid into an overdrawn bank account and shall at all times be identifiable as Comcen money. This clause remains in force until payment is received in full by Comcen at which time title will pass to the customer."

(3) Until title of the goods passes to the Customer the goods shall be kept separate and distinct from all other property of the customer and of third parties and in good condition and stored in such a way as to be clearly identifiable as belonging to Comcen and the Customer will not cause or permit or suffer any labels, badges, serial numbers or other means of identification to be removed or obscured.

(4) Comcen may for the purpose of recovering its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

5. Price and Payment

(1) Unless otherwise expressly agreed, the price is payable on delivery of the goods with invoice, if the Customer does not take delivery when requested, the price is payable seven days after Comcen has requested the Customer to take delivery, together with a reasonable charge for the care and storage of goods.

- (2) Time for payment is of the essence and if payment is not made by the end of month following the month of invoice. Comcen may require the Customer to pay interest per month from the date of invoice compounded monthly.
- (3) If payment should not be made in thirty days Comcen will be entitled to charge (in addition to interest and any legal costs ordered by the Court and without prejudice to any other rights remedies available to Comcen) the sum of £100 plus VAT by way of liquidated damages and as contribution to the administrative costs incurred by Comcen in taking steps to secure payment.
- (4) Unless otherwise stated, all payments are to be made in sterling to the Comcen address as stated on invoice.
- (5) Where any agreement to supply goods provides for goods to be delivered by installments which are to be separately paid for, such agreement should not be severable and failure by the Customer to pay for or accept delivery of any installment by the due date shall entitle Comcen at its option to treat the whole agreement with the Customer as repudiated.
- (6) Price may be increased, or decreased, by Comcen, at its discretion to take account of fluctuations in exchange rates or taxes or other price changes outside the control of Comcen.
- (7) The price shall be payable without any deduction or set-off unless expressly agreed by a Director of Comcen.

6. Warranty and Liability of Comcen

- (1) For a period of one year (unless otherwise agreed in writing from a Director of Comcen) after the date shown on the specific invoice for the particular goods. Comcen undertakes to credit the account of the Customer (if any) or to remedy free of charge by repair or replacement any defects in the goods covered under the manufacturers guarantee provided that the Customer notifies Comcen promptly of such a defect and where the customer arranges for the prompt return to Comcen of the defective goods at the Customers risk and expense.
- (2) Save as herein specifically provided and save to the extent that the same cannot by statute be limited all conditions and warranties and representations express or implied statutory or otherwise in relation to the goods are hereby excluded. Nothing in this clause 6(2) of these conditions shall exclude the undertakings implied by section 12 of the Sales of Goods Act 1979.
- (3) Comcen does not exclude liability in respect of death or personal injury, which results from the negligence of Comcen, its employees, agents and subcontractors.
- (4) Comcen shall not be liable for any financial consequential or indirect loss suffered by the Customer or any third party whether such loss arises from breach of a duty in contract or tort or in any other way including without limitation to the generality of this exclusion, loss of profits, economic loss, loss of goodwill, loss of contract, loss of data, damage to the property of the Customer or anyone else (other than damage caused by the negligence of Comcen or any of its employees, agents or sub contractors) and personal injury to the Customer or anyone else (except so far as such injury is attributable to Comcen's negligence).
- (5) To be valid any claim against Comcen whether in contract or in tort must be brought within two years of the date of invoice and any such claim shall be limited to an amount by way of liquidated damages equal to the invoice value of the goods in respect of which the claim was made.

7. Force Majeure

Comcen shall not be liable to the Customer for any failure to perform its obligations due to any circumstances beyond its control (including without limitations strikes, lock-outs, industrial disputes, failure or power supply delays caused by any other person, firm or company delays caused by manufactures of goods, riots, civil disturbances, war or war like activity, embargoes, fire, explosion, flood or natural causes) and in such event Comcen may elect by written notice to cancel any agreement with the Customer or elect that the time for performance shall be extended until such time as Comcen can reasonably effect performance.

8. Waiver

If the customer shall be in breach of any of these conditions then failure by Comcen to require the Customer to rectify the same shall not create any assumption that such a breach has been waived by Comcen.

9. Notices

All demands, notices and other communications shall be in writing and be addressed to Comcen at its address shown in invoices delivered by it and to the Customer at the address given by it for delivery and invoices (or as subsequently notified by one to the other in writing) and shall be deemed to be duly given or made by letter 48 hours after being posted by first class postage pre-paid or if delivered by hand at the time of delivery or if given or made by telex when the Sender shall receive the answer back of the person to whom it was sent.

10. Law

These Conditions shall be governed and constructed in accordance with English law