

Conditions of Contract

1. PRELIMINARY
- 1.1 IN these conditions:
 - "the Company" means Miller Waite Limited or any Associated Company
 - "the Contract" means the Contract between the Company and the Customer for the sale or supply of Equipment and/or Services
 - "the Customer" means the person, firm or company with whom the Contract is made by the Company
 - "the Equipment" means any Equipment, machinery, parts, spares, software and any other goods or Services sold or supplied by the Company
 - "the warranty Period" means
 - (i) in the case of hardware a period of twelve months from the date of delivery or the balance of any warranty period provided to the Company by the manufacturer if greater or
 - (ii) in any other case a period of ninety days from the date of delivery.
- 1.2 THESE conditions apply to all Contracts of the Company to sell or supply Equipment and/or Services and shall prevail over any terms put forward by the Customer unless the Company expressly agrees to them in writing. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer and no concession made or latitude allowed by the Company to the Customer shall affect the strict rights of the Company under the Contract.
- 1.3 THESE conditions may only be varied with the express written agreement of the Company.
2. PRICES
- 2.1 UNLESS otherwise specified prices payable for the Equipment and/or Services are exclusive of carriage and are subject to the Company's right to require payment of delivery charges, insurance costs, customs duties, special handling charges and/or packaging charges as appropriate.
- 2.2 THE Company shall have the right at any time to revise prices to take into account increases in costs, including (without limitation) costs of agreed changes in any taxes, duties, levies or exchange rates or costs arising as a result of site conditions, delays, interruptions, lack of information and any other factor beyond the Company's control.
3. ORDERS AND DELIVERY
- 3.1 NO order shall be accepted by the Company unless first confirmed by the Customer in writing, email, secure online or by facsimile.
- 3.2 The Customer will be responsible for complying with all conditions and requirements of the carriers. Unless otherwise agreed by the Company delivery of the Equipment will be ex works.
- 3.3 ALL times or dates given for delivery of the Equipment are only estimates given in good faith and are not conditions, warranties of innominate terms (or terms otherwise howsoever), of this or any other (whether collateral or otherwise) Contract.
- 3.4 THE Company shall give the Customer notice when the Equipment is ready for delivery. If the Customer refuses or fails to arrange collection or take delivery (as the case may be) of Equipment ordered within seven days of service of that notice (a) the Customer will bear the risk of any loss or damage to the Equipment after expiry of that time (b) the Company shall be entitled to immediate payment in full for the Equipment which is the subject of the order and (c) the Customer shall in addition to the invoice Price pay all costs of storage and any additional costs incurred as a result of such refusal or failure. The Company shall not be liable to the Customer for any loss or damage to the Equipment causing by their storage.
- 3.5 THE Company may make and the Customer shall accept partial deliveries of Equipment ordered. Each delivery shall be considered to be the subject of a separate Contract and failure by the Company to make any one or more deliveries in accordance with the Contract or any claim by the Customer in respect of any one or more deliveries shall not entitle the Customer to treat the Contract as a whole repudiated.
4. ACCEPTANCE
- 4.1 THE Customer will accept the Equipment even if it is delivered late and late delivery will not entitle the Customer to terminate the Contract.
- 4.2 THE Customer shall inspect the Equipment as soon after delivery as is reasonably practicable and in any event within four days after delivery, which period the Customer agrees is a reasonable period given the nature of the Equipment supplied by the Company.
- 4.3 THE Customer will notify the Company in writing of any shortage of supply, deficiency, or damage to or fault with the Equipment within five days of delivery. If the Customer fails to comply with this clause the Company shall not be liable to the Customer in respect of any shortage discrepancy, damage or fault, or in respect of any consequential losses of expenses arising therefrom.
- 4.4 THE Customer hereby agrees that the retention of the Equipment without written complaint to the Company within five days of delivery constitutes for all purposes and intimation by the Customer that the Equipment has been unconditionally accepted, and that given the nature of the Equipment supplied by the Company, five days constitute a reasonable period within which the Equipment should be rejected.
- 4.5 EACH of the preceding sub clauses of this clause is entirely without prejudice to the provisions of clause 9 hereof.
5. RISK
- FROM the time the Equipment leaves the Company's premises whether this be by way of collection by the Customer, receipt from our own staff or by carriers (as the case may be) the risk in the Equipment shall pass to the Customer who shall be solely responsible for the custody and maintenance thereof.
6. PAYMENT
- 6.1 IF credit terms have been agreed in writing by the Company payment shall be made in full without any deduction or set-off within 30 days of the date of invoice unless otherwise agreed in writing by the Company. In any event, the Company

reserves the right to withdraw credit facilities at any time. If the trading relationship between a Customer and the Company is terminated for whatever reason then all sums due by the Customer become payable immediately.

- 6.2 IF credit terms have not been agreed by the Company then payment shall be made in full without any deduction or set-off at the time of placing the order for the Equipment.
- 6.3 IF the Customer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him/her or (if the Customer is a limited Company) if any resolution or petition to wind up such company shall be passed or presented or if a receiver or administrator of the whole or any part of such company's undertaking property of assets shall be appointed then if delivery of the Equipment has been effected the invoice shall immediately become due and payable by the Customer; if delivery has not been so effected then the Company may at its option cancel the Contract or cancel or suspend delivery.
- 6.4 NOTWITHSTANDING any of the terms and conditions hereof the time of payment shall be of the essence of the Contract.
- 6.5 INTEREST shall be payable on overdue accounts at the rate of 2% per month or part thereof on the amount for the time being outstanding from the due date of payment thereof until receipt by the Company whether before or after judgement.
- 6.6 IF any cheque presented in payment of an invoice by a Customer shall be returned unpaid by the Customers bank or if any agreed standing order or direct debit arrangement shall fail to operate then the Customer shall in addition to all other sums payable under the Contract pay to the Company the sum of £20 for each event or such greater sum as shall represent the cost incurred by the Company by reason of such dishonour or failure aforesaid.
- 6.7 IF at any time whatsoever it is the Customer's intention to assign its debts to an associated Company of the Customer or to a Third Party, the Customer shall notify the Company without delay.
- 6.8 IF credit terms have been agreed by the Company, the Customer and its directors undertake to notify the Company, as soon as practicable after such agreement, of the existence and identity of any associated companies under common ownership with the Customer. This obligation is a continuing obligation such that, if at any time after credit has been granted, any other Company comes into common ownership with the Customer, the same must be notified, as soon as is practicable, to the Company. It is agreed that the requirements under sub-clause are of the essence of the agreement to provide credit and of any other Contract made under or pursuant to that agreement between the Company and the Customer.
- 6.9 ANY costs and/or expenses incurred by the Company in recovering fund from, or otherwise enforcing any of its rights against, the Customer, whether within or outside the United Kingdom, shall be fully reimbursed to the Company by the Customer, and the Customer agrees fully to indemnify the Company in respect of any such costs or expenses.
- 6.10 IF credit terms have been agreed by the Company, the Customer undertakes to notify the Company of any material or potential material change in its finances and/or structure and/or position generally. Such noticeable events include, but are not limited to:
- (1) any change in the information supplied by the Customer to the Company for the purposes of and/or in relation to obtain credit; and
 - (2) any change in the ownership of the shares in the Customer and any change in the number of such shares;
 - (3) any change in the ownership of the shares in any Company, which has been, at any time after the granting of credit, under common ownership with the Customer;
 - (4) any material change in the nature and/or value of the Customers assets, with as a result of disposal, acquisition, the grant of crystallisation of any security, or otherwise howsoever.
- It is agreed that the requirements under this sub-clause a of the essence of the agreement to provide credit and of any other Contract made under or pursuant to that agreement between the Company and the Customer.
7. RETENTION OF TITLE
- 7.1 THE Equipment shall remain the property of the Company until payment is made in full for all sums due under all Contracts between the Company and the Customer.
- 7.2 THE Customer shall hold all Equipment properly in which remains in the Company as bailee (and, for the avoidance of doubt, fiduciary) for the Company, shall store the same in such a way that it can be identified as the Company's property and shall keep it separate from the Customer's own property and the property of any other person.
- 7.3 AT any time whatsoever the Company shall be entitled to recover Equipment property in which remains in the Company and for that purpose the Customer hereby grants to the Company, its agents and employees an irrevocable licence to enter any premises where such Equipment is stored in order to repossess the same.
- 7.4 IF in the normal course of business the Customer shall sell Equipment the property in which remains (prior to such sale) in the Company:
- 7.4.1 the Customer shall hold on trust for the Company absolutely all the benefit of and/or rights arising under any such Contract of sale;
- 7.4.2 the Customer shall hold on trust for the Company absolutely all proceeds of any such contract of sale and shall pay the same into a separate identified bank account ("the trustee account") (which shall at no time have paid into it monies other than monies held on trust for the Company and shall at no time be overdrawn) as trustee for the Company.
- 7.5 IF, as a result of or of the exercise of its rights under 7.4.1 and/or 7.4.2 above, the Company receives any monies, the same will not in whole or in part discharge:
- (1) any of the Customer's liability to pay the purchase price under this or any other contract between the Company and the Customer; or
 - (2) any other debts owed by the Customer to the Company.
- But if as a result of payment by the Customer of all or part of the monies owed by it to the Company under this or any other contract together with the receipt by the Company of monies as a result of or of the exercise of its rights under 7.41 and/or 7.42 above, the Company receives in total monies exceeding in amount the Customer's Contractual debts to it, the Company shall pay to the Customer a sum equivalent to such excess.
- 7.6 The Customer's rights to use the Equipment are automatically revoked on the appointment of administrative receiver to the Customer.
8. SPECIFICATION AND PERFORMANCE

- 8.1 ALL drawings specification and technical documents issued by the Company at any time in relation to the Contract are issued solely for the Customer's use in connection with the Equipment and shall not be copied reproduced or communicated to any third party without the Company's express written agreement.
- 8.2 THE Company reserves the right to alter any or depart from any specification or design of any Equipment sold provided that any such alteration or departure shall not to a material extent adversely affect the performance of the Equipment or the workmanship or the materials used.
- 8.3 UNLESS otherwise expressly agreed in writing any performance figures, quoted or referred to in any specification or other document are estimates only based on assumed conditions in a well managed office with experienced adequate and efficient operative and appropriate services and proper use of satisfactory material.
9. WARRANTY
- 9.1 THE Company will make good or by repair or exchange (as its option) such of the Equipment or part thereof which is shown to its reasonable satisfaction to have proved defective in materials or workmanship during the Warranty period on the following terms:
- 9.1.1 any defect in or failure of the Equipment must be notified to the Company in writing as soon as is practicable and in any event no later than five days after discovery.
- 9.1.2 the Equipment must be unmodified, have been properly used under normal working conditions and have been properly stored, installed and maintained.
- 9.1.3 before returning the Equipment or any part thereof the Customer must obtain a return authorisation number from the Company and details of the Company's returns procedure, which must be fully complied with.
- 9.1.4 the Equipment or part to be returned must be delivered to the Company's premises in its original packaging together with supporting documentation showing full description of the alleged fault and quoting the relevant returns number. In the event that the Customer fails to comply with this requirement then the Company will be entitled to charge a 15% handling fee upon authorised return of the Equipment.
- 9.1.5 all delivery charges for carriage to and from the Company's premises must be paid by the Customer
- 9.1.6 where parts only are returned the Company shall not be responsible for installing any such part after repair or exchange.
- 9.1.7 the Company may elect to carry out any repairs at the premises of the Customer and if so electing then the Customer shall provide the Company's employees or agents with free access to the place of installation and free access to any service or facilities that may be required to repair the Equipment.
- 9.1.8 If it so elects the Company may require the Customer to return the Equipment or part direct to the manufacturer for repair or exchange in which case such repair or exchange on the part of the manufacturer shall satisfy the Company's obligations under this clause 9
- 9.1.9 the foregoing warranty shall only apply to any replacement Equipment or parts thereof supplied by the Company under this warranty for the balance of the warranty period applicable to the Equipment sold.
- 9.2 THE Company gives no undertaking that the Equipment is fit for any particular purpose (including any purpose for which such Equipment is commonly supplied) or is of any particular quality in respect of its appearance, finish, safety, durability or freedom from defects or otherwise. The Customer, having greater knowledge of his own requirements, relies entirely on his own skill and judgement in evaluating whether the Equipment is in every respect of satisfactory quality.
- 9.3 SUBJECT to the foregoing all conditions, terms and representations, express or implied by statute, common law, custom or usage in relation to the Equipment are hereby excluded and the Company shall be under no liability to the Customer for any loss, damage or injury, direct or indirect, resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Company, its employees or agents.
- 9.4 IN no event will the Company be under any liability whatsoever and howsoever arising for any use or loss of profits, interruptions of business or any other indirect special or consequential loss of any type arising or alleged to have arisen out of any act or default, whether negligent or otherwise, of the Company in respect of the Company's obligations under the Contract.
- 9.5 IF the Customer deals as a consumer as defined in S.12 of the Unfair Contracts Terms Act 1977 the above provisions shall not apply and the Customer's statutory rights under the Sales of Goods Act will be unaffected.
- 9.6 THE Company does not exclude liability for death or personal injury to the extent that it is caused by the negligence of the Company its employees or agents nor for breach of any of the undertakings as to title implied into the Contract by S.12 of the Sales of Goods act 1979.
10. PROGRAM LICENCES
- 10.1 The Customer acknowledges that all copyright and other rights in any program sold by the Company remain the property of the Licensors or Suppliers of the program and that neither the Customer nor any Third Party to whom the Customer supplies or transfers the program has any rights therein except as expressly licensed by the Licensor or supplier of the program.
- 10.2 The Customer may not expect as expressly licensed by the Licensor or Supplier of the program: -
- i. reproduce any translate any program or part of a program
 - ii. sell, rent, lease or otherwise part with possession or control of a program to another party.
- 10.3 The Customer agrees to ensure that all programs supplied by the Company are used by any Third Party to whom the Customer transfers the program only as expressly licensed by the Licensor or Supplier of the program.
- 10.4 Upon any supply or transfer of the program by the Customer to any Third Party the Customer agrees to transfer to the Third Party clauses 10.1 to 10.3 of these conditions and thereby bind the Third Party to the same.
11. REPRESENTATION
- THE Company shall incur no liability to the Customer for misrepresentation by virtue of any statement made by or on behalf of the Company prior to the Contract whether orally or in any letter document or sales literature and the Customer shall not be entitled to rescind the Contract on the grounds of any such misrepresentation.
12. RETURNS
- THE Company shall be under no obligation to accept return of any Equipment other than as provided in clause 9. If not withstanding the Company shall in any particular case agree to accept return of Equipment which is not defective it shall only do so on terms that (a) the Customer shall pay a sum in respect of the costs so incurred by the Company equal to twenty-five percent of the full invoice price subject to a minimum charge of £30 (b) the Customer shall obtain a returns

authorisation number from the Company and comply with the Company's returns procedure and (c) the Equipment must be returned to the Company's premises in its original packaging.

13. TELECOMMUNICATIONS EQUIPMENT

13.1 WHEN the Equipment supplied by the Company is to be used in conjunction with British Telecom lines or apparatus then the following additional conditions shall apply.

13.1.1 British telecom shall have the right to require modification to be carried out to Equipment which is already installed and in use. Any modifications required will be carried out at the Customer's expense.

13.1.2 in no event shall the Company be liable for damages, loss or injury to British Telecom Equipment or personnel in connection with or arising out of the Customer's act or neglect.

14. FORCE MAJEURE

THE Company shall not be liable for any delay or failure in performance of its obligation under the Contract which is due to or results from any circumstances beyond its reasonable control including but not limited to delays or defaults of suppliers, or the defaults of any sub-contractor, war, strike, lock-out, trade dispute, flood, accident to plant or machinery, shortage of material or labour. In any such event the Company shall be entitled to delay or cancel delivery of the Equipment. If due to any such event the Company has insufficient stocks to meet all its commitments the Company may apportion available stocks between its Customers at its sole discretion.

15. CANCELLATION

NO Contract or order may be cancelled without the Company's written consent. In the event that cancellation is agreed for whatever reason the Customer shall indemnify the Company against all costs, claims, loss and expense occasioned thereby including any consequential loss and loss of profits.

16. EXPORT

16.1 If under this Contract the Goods are to be exported out of England and/or Wales by the Company to the Customer or its order, the following shall apply:

16.1.1 Clause 9.1 (and all sub clauses of clause 9.1) hereof shall not apply. The Goods are sold with the manufacturer's warranty (if any is provided) only. Subject to its absolute discretion as to how to do so the Company will use its best endeavours, if requested to do so by the Customer, to ensure that the Customer's rights the manufacturer under any such warranty are satisfied.

16.2 It is a condition of this Contract that the Customers enters this Contract as principal and not as agent for any other person or party. The Customer by entering this Contract agrees and represents that it does so as principal and not as an agent.

16.3 If as a result any non-payment or any other breach of this Contract by the Customer the Company takes any steps, action or proceedings howsoever to obtain payment or to enforce its rights hereunder, the Customer shall be obliged to indemnify the Company in respect of any costs (which, if proceedings are issued, shall be paid by the Customer on the indemnity basis) or expenses or liability thereby suffered or incurred by the Company.

17. GENERAL

17.1 IF at anytime one or more of the above Conditions becomes in whole or in part void, invalid or unenforceable then the remainder of these conditions shall nevertheless remain valid and enforceable.

17.2 ALL notices hereunder shall be in writing and shall be given by hand or sent by prepaid first class post or facsimile or telex to the party concerned at its last known address. Notices sent by first class post shall be deemed (in the absence of earlier receipt) to have been delivered forty-eight hours after despatch and notices sent by facsimile or telex shall be deemed to have been delivered on the first working day following the date of their despatch.

17.3 THE construction, performance and validity of the Contract and of these conditions shall in all respects be governed by the laws of England and the parties of this Contract hereby submit to the exclusive jurisdiction of the courts of England and Wales

17.4 ASSOCIATED Company shall mean Miller Waite Limited or any subsidiary thereof (unless otherwise expressly defined) and "subsidiary" having the meaning as defined by section 736 of the companies Act 1985