

# ETL SYSTEMS TERMS & CONDITIONS

## 1. Interpretation

1.1 In these conditions:

"Buyer" means the person who accepts a quotation of the Seller for the sale or whose order for the Goods is accepted by the Seller.

"Goods" means Goods which the Seller is to supply in accordance with these conditions.

"Seller" means the standard terms and conditions of the sale set out in this document and (unless the context is otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"Contract" means the contract for the purchase and sale of the Goods.

"Writing" includes telex cable facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these conditions are for the convenience only and shall not affect their interpretation.

## 2. Basis of the sale

The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing with between the authorised representatives of the Buyer and Seller.

2.3 The Sellers employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any typographical, clerical or any other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document issued by the Seller shall be subject to correction without any liability on part of the Seller.

## 3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted unless and until confirmed in Writing by the Seller's authorised representative.

3.2 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, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with these terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyers order (if accepted by the Seller)

3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4. Price of Goods

4.1 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, material or other costs of manufacture), change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.2 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay the Seller.

## 5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and Seller, the Seller shall be entitled to invoice the Buyer for the price of Goods on or at the time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods. The Buyer shall pay the price of the Goods by the 30<sup>th</sup> day after the date the Goods were invoiced, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment price shall be the essence of the Contract. Receipts for payment will be issued on request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

5.4.1 cancel the contract or suspend any further deliveries to the Buyer;

5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

## 6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. The Seller shall not in any event be liable for any special consequential or indirect loss or damage (including but without limitation any loss of or in respect of profit or wages or overheads) suffered by the Buyer as a result of any delay in or failure of delivery. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyers fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract

## 7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the seller has tendered delivery of the Goods

7.2 Notwithstanding delivery and the passing risk of the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other

7.3 Goods passes to the Buyer for which payment is then due.

7.4 Until such time as the property 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 and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to sell or use the Goods in the ordinary course of business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.6 The Buyer shall not be entitled to pledge or in anyway 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. Warranties and liability

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 will at that time be free from defects in materials and workmanship, and will remain so for a period of 12 months from that time.

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

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

8.2.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence on the part of the Buyer or its servants, agents, employees abnormal working conditions, failure to follow the Seller's instructions (whether in oral or 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 benefit of any such warranty or guarantee as is given by the manufacturer to the Seller and that the Seller has power to transfer the same.

8.2.5 In the event of the Buyer at any time alleging or claiming that the Goods (when used in accordance with the Supplier's instructions or recommendations and in normal operating conditions) produce or have at any time produced incorrect, faulty or misleading readings and/or results the onus of proof in respect of such allegation or claim shall be on the Buyer.

8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979), all warranties, conditions, or other terms implied by statute or common law are excluded to the fullest extent permitted by the law.

8.4 Any claim by the Buyer which is based on any defect in the quality or condition of Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or where the defect or failure was not apparent on reasonable inspection within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

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 part in question) free of charge or, at the Seller's discretion, refund to the Buyer the price of the Goods (or proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.6.1 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 term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss of profit or wages or overheads or damage to Goods and/or material passed through or otherwise processed or charged by the Goods or otherwise), costs, expenses or other claims for any special, or consequential or indirect loss or damage or compensation whatsoever (and whether caused by negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, as expressly provided in these conditions.

8.6.2 The Seller shall not be liable to indemnify the Buyer for any consequential loss claim (whether for loss or profit or wages or overheads or damage to Goods and/or materials passed through or otherwise processed or changed by the Goods or otherwise), costs, expenses, or other claims for consequential or indirect loss or damage or compensation whatsoever made against the Buyer by any third party and arising out of or in connection with the use of the Goods for the production of technical calculations preliminary to or in the course of the supply of materials or Goods of any nature by the Buyer to such third party.

8.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.8.1 Act of God, explosion, flood, fire and accident;

8.8.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority.

8.8.4 Import or export regulation or embargoes;

8.8.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or of a third party)

8.8.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7 Power failure or breakdown in machinery

## 9. Safety instructions

9.1 The Buyer undertakes with the Seller to ensure compliance by his servants or agents with any safety precautions or instructions for safe handling and operation given by the Seller and to ensure that the site or works where the Goods are located at any time including the electrical installation thereof is suitable and safe for the purpose described.

## 10. Insolvency of Buyer

10.1 This clause applies if:

10.1.1 the Buyer makes any voluntary agreement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) ; or

10.1.2 an encumbrance take possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above to occur in relation to the Buyer and notifies the Buyer accordingly .

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without the liability to the Buyer, and is Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

## 11. General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Conditions is held by any competent authority to be in valid or unenforceable in whole or in part of the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.4 The contract shall be governed by the Laws of England.