

**STANDARD TERMS AND CONDITIONS  
FOR SALE OF GOODS**

**OF**

**AirBench Ltd**

**1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Buyer" means the organisation or person who buys Goods from the Seller;
- 1.2 "Goods" means the articles to be supplied to the Buyer by the Seller;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "List Price" means the list of prices of the Goods maintained by the Seller as amended from time to time;
- 1.5 "Seller" means AirBench Ltd of 14 Grange Farm Road, Colchester, Essex, CO2 8JW.

**2 GENERAL**

- 2.1 These Terms and Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

**3 PRICE AND PAYMENT**

- 3.1 The price shall be that in the Seller's current List Price, or such other price as the parties may agree in writing. The price is exclusive of VAT or any other applicable costs. Carriage shall be paid for by the Buyer, except when no carriage is chargeable.
- 3.2.1 Payment of the price and VAT and any other applicable costs shall be due within 30 days of the date of receipt of the invoice supplied by the Seller, where credit terms have been agreed. In other cases, payment shall be made before despatch of the goods.
- 3.3 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day in accordance with the Late Payment of Commercial Debts (Interest) Act.
- 3.4 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled, without incurring any liability whatsoever to the Buyer for non-delivery or any delay in delivery; to;
  - 3.4.1 require payment in advance of delivery in relation to any Goods not previously delivered.
  - 3.4.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
  - 3.4.2 terminate the contract.
- 3.4 If payment of the price or any part thereof is not made by the due date, any discounts offered or agreed against the List Price will become null and void and a further invoice will be issued in this amount and become immediately payable.

**4 DESCRIPTION**

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

**5. CANCELLATION**

- 5. The Buyer shall indemnify the Seller against all loss (including loss of profit) or expense however indirect or remote resulting in cancellation or any other breach of the contract by the Buyer
- 5.2 If at any time the Buyer shall express the wish to terminate the contract at least 21 days notice prior to the anticipated delivery date must be given without which the Seller shall be entitled to rely fully upon payment in return for delivery.
- 5.3 If at any time prior to delivery of goods and to transfer of title information is received by the Seller leading the seller to the conclusion that the Buyer's credit worthiness has been impaired (and the Seller's decision in relation thereto shall be final and binding) the company shall have the right to withdraw without being responsible to the Buyer for any loss or expense however indirect or remote resulting from the cancellation.

**6 DELIVERY**

- 6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer . The Buyer shall make all arrangements necessary to take delivery of the Goods including offloading whenever they are tendered for delivery, which will normally be in normal working hours 0800 –1700 hrs Mon–Friday. Delivery will normally be by commercial carrier without mechanical offloading facilities. Delivery does not include placing of equipment in position or commissioning.
- 6.2 The date of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract.
- 6.3 If the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
- 6.4 The Buyer shall be entitled to replacement Goods where the Goods have been damaged during transportation. The Buyer must notify the Seller of the damage within 24 hours of delivery.

**7 RISK**

Risk in the Goods shall pass to the Buyer on delivery. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or it's agreed agent.

**8 TITLE**

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods. No title to Intellectual Property Rights vested in the design or manufacture of the goods will pass at any time.

**9. WARRANTY**

- 9.1 Where goods are supplied by the Seller and in use for the purpose for which they are supplied by the Seller are proved to be defective within 12 months of the date of delivery by the Seller then the Company at it's discretion shall a) repair such goods or b) replace such goods or c) allow the Buyer a reasonable credit in respect of such goods that are defective. Any works under this clause shall take place either at the customers premises or on return (carriage both ways paid by seller) to the Sellers premises.

9.2 The Buyer warrants that he has disclosed to the company in writing all matters which may affect the fitness for their purpose of the goods supplied. The Buyer agrees that an order for goods by reference to a product name number or description shall be to the standard version of those goods and that supply of them will fulfil the Company's obligations.

## 10 EXCLUSION OF LIABILITY

10.1 The terms of clause 9 are in lieu of all conditions and warranties whether expressed or implied by statute, custom of the trade or otherwise and any such condition or warranty is excluded.

10.2 Subject to the provisions of clauses 9 and 10, the Sellers aggregate liability in tort or for breach of contract in connection with the goods shall be limited to damages of an amount not exceeding the contract price for the goods in relation to which such liability may have arisen. The Seller shall have no liability in any case for the loss of profit or other consequential loss.

10.3 Nothing contained in these items shall purport to exclude or restrict any liability the exclusion or restriction of which is prohibited by section 2(1) or section 6(1) of the Unfair Contract Terms Act 1977.

10.4 The parties have freely negotiated the contract including the price in the knowledge that the liability of the Seller is to be limited in accordance with these terms.

## 11 LIMITATION OF LIABILITY

11.1 Where any court or arbitrator determines that any part of Clause 10 above is, for whatever reason, unenforceable the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the contract price.

11.2 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

## 12 FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

## 14 RELATIONSHIP OF PARTIES

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

## 15 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

## 16 SEVERABILITY

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and

Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## 17 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

## 18 INSOLVENCY OF PURCHASER

If the Buyer makes any voluntary arrangement 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 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer ceases or threatens to cease to carry on business or the Seller has reasonable grounds to believe that any of the aforementioned events may occur 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 any liability to the Buyer and if the goods have been delivered or collected but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, alternatively the company may at its election require the immediate return of the Goods not paid for and in the event of the Buyer's failing to return the Goods to the Seller's works, the Seller or its authorised representatives may enter upon the premises of the Buyer or any third party whom the Goods are situated or its authorised representatives in the collection of the goods.