

**GENERAL CONDITIONS OF SALE**

**1. Definitions**

In the conditions set out below ('The Conditions') expressions shall have the following meanings:-

<u>Word</u>	<u>Meaning</u>
Seller	CMC mobile computing Ltd
Buyer	the person, firm or company with whom the contract is made with the seller
Goods	the goods specified in the contract

**2. General**

These conditions shall be deemed to be incorporated in all contracts to sell goods and in the case of any inconsistency with any order letter or form of contract sent by the Buyer to the Seller of any other communication between the Buyer and Seller whatever may be their prospective dates the provisions of these conditions shall prevail unless expressly varied in writing and signed by a Director on behalf of the Seller. Any concession made or latitude allowed by the Seller to the Buyer shall not affect the strict rights of the Seller under the contract. If in any particular case any of these conditions shall be held to be invalid or shall not apply to the contract the other conditions shall continue in full force and effect.

**3. Orders**

- 3.1 Notwithstanding that the Seller may have given a detailed quotation no order shall be binding on the Seller unless and until it has been accepted in writing by the Seller.
- 3.2 The Seller catalogues, brochures, leaflets or correspondence are not binding and reasonable variations may be made without notice and Goods so varied shall be accepted as applying to the contract.
- 3.3 The order cannot be varied or cancelled otherwise than upon the terms expressly agreed by the Seller and the Buyer and confirmed in writing by the Seller.

**4. Prices**

- 4.1 The price payable for Goods is stated exclusive of Value Added Tax and shipping and may be amended by the seller by notice to the Buyer having immediate effect to reflect exchange rate fluctuations and increased costs.
- 4.2 Every price quoted by the Seller or referred to in an order confirmation is based on these conditions and reflects the limitations on the Seller's liability herein contained.

**5. Additional Costs**

The Buyer agrees to pay for any loss or extra costs incurred by the Seller through the Buyer's instructions or lack of instruction or through failure or delay in taking delivery or through any act or default on the part of the Buyers, its servants or employees.

**6. Delivery**

- 6.1 The period for delivery shall be the period within which the Goods are intended to be despatched from the Seller's premises and shall be calculated from the time of the receipt by the Seller of the Buyer's order or from the receipt of all the necessary information to enable the Seller to procure the manufacture of the Goods whichever is the later and the Buyer shall take delivery of the Goods within that period.
- 6.2 All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the seller. Time of delivery shall not be the essence of any contract nor shall the Seller be under any liability for any delay beyond the seller's control.
- 6.3 Where the Goods are handed to a carrier for carriage to the Buyer then the carrier shall be deemed to be an agent of the Seller and not the Buyer for the purposes of sections 44 45 and 46 of the Sale of Goods Act 1979.
- 6.4 Section 32 (3) of the Sale of Goods Act 1979 shall not apply to goods sent by the Seller.
- 6.5 Within three working days of delivery of the Goods the Buyer shall inspect them and test them to ensure that they are in good working order and free from any defects.
- 6.6 No liability of non-delivery loss of or damage to the Goods occurring prior to delivery or for any claim that the goods are not in accordance with the contract will attach to the Seller unless claims to that effect are notified in writing by the Buyer to the Seller (and in the case of claims of non-delivery loss or damage with a copy to the carrier if the Seller's own vehicles have not been used to deliver the goods).

- a. within three working days of delivery for loss, damage or non-compliance with the contract or
  - b. within seven days of the date of the invoice for non-delivery
- 6.7 In the event of a valid claim of non-delivery, loss, damage or non-compliance with the contract the Seller undertakes at its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery damage or non-compliance.
- 6.8 If the Buyer shall fail to give notice in accordance with condition 6.6 above the Goods shall be deemed to be in all respects in accordance with the contract and without prejudice to earnest acceptance by the Buyer it shall be bound to accept and pay for the same accordingly.
- 6.9 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 may at its sole discretion without prejudice to its further rights store the Goods at the risk of the Buyer and take all responsible steps to safeguard and insure them at the cost if the Buyer provided that the Buyer shall be immediately informed thereof.
- 6.10 Unless otherwise stated prices are exclusive of carriage and insurance to the Buyers premises and delivery shall take place at the Seller's premises.
- 6.11 Where delivery is to be made by instalments, each delivery shall be deemed for such purpose to be the subject of a separate contract and any failure whatsoever by the seller in respect of any one delivery shall not entitle the buyer to repudiate the contract or any instalments remaining to be delivered thereunder or to withhold payment in respect of any instalment previously delivered.

## **7. Returns**

- 7.1 Goods supplied in accordance with the contract cannot be returned without the Seller's prior authorisation either in writing or by the allocation of an official Returns Material Authorisation number.
- 7.2 Authorisation for the return of goods will apply only to goods found to be faulty.
- 7.3 Duly authorised returns shall be sent to the Seller's premises at the Buyer's expense and risk.

## **8. Passing of Title Risk**

- 8.1 From the time of the delivery of the Goods shall be at the risk of the buyer who shall be solely responsible for their custody and maintenance but otherwise expressly agreed in writing the Goods shall remain the property of the Seller until all payments under the contract have been made in full and unconditionally. Whilst the ownership of the Seller continues the Buyer shall keep the Goods separate and identifiable from all other goods in the possession as bailee of the Seller.
- 8.2 In the event of any resale by the Buyer of the Goods the beneficial entitlement of the Seller shall attach to the proceeds or claim thereof shall be assigned to the Seller and until and subject to any assignment shall be held on trust in a separate identified account for the Seller by the Buyer who will stand in a strictly fiduciary capacity in respect thereof.
- 8.3 In the event of failure to pay the price in accordance with the contract the Seller shall have the power to re-sell the Goods such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Seller and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer, or any other premises where the Seller believes the Goods to be for the removal of such Goods.
- 8.4 Pending full payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business for which the Goods are for the time being used in an amount equal to the balance of the price for the same.

## **9. Terms of Payment**

- 9.1 Unless otherwise agreed in writing by the Seller payment shall be due in cash not later than thirty days from the invoice date.
- 9.2 The price of the Goods shall be done in full to the Seller in accordance with the forms of the contract and the Buyer shall not be entitled to exercise any see-off line or familiar right of claim.
- 9.3 The time of payment will be the essence of the contract.
- 9.4 Without prejudice to any other right it may have the Seller is entitles to change interest at 2% above Current Bank rate of HSBC Bank plc on overdue payments of the price of the Goods.
- 9.5 The Buyer agrees that the Seller may choose to factor or assign debts incurred by the Buyer.

**10. Default or Insolvency of Buyer**

If the Buyer shall be in breach of any of its obligations under the contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer 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 or (if the Buyer is a company) if any Resolution of Petition to wind up such company shall be passed or presented or if a Receiver of the whole or part of such company's undertaking property or assets shall be appointed the Seller in its discretion and without prejudice to any other right or claim may be notice in writing determine wholly or in part any and every contract between the Seller and the Buyer or any (without prejudice to the Seller's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods until any defaults by the Buyer be remedied.

**11. Limitation of Liability**

The Limitation of the Seller to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall not be extended mutatis mutandis beyond the manufacturers under any condition, warranty or representation expressed or implied statutory or otherwise and any liabilities of the Seller to the Buyer in tort in relation to any defect therein shall be and hereby excluded.

**12. Software License**

Any product supplied by the seller containing software is supplied with an End User License Agreement, which is transferable only with the hardware supplied and any use of the product must comply with the terms of the End User License Agreement.

**13. Driver Training**

For the purposes herein, "motor vehicle" shall include any automotive machinery utilized for the transport of persons or goods into which the Product has been incorporated or installed.

Without limiting the generality of any other indemnity or waiver of liability contained herein, Buyer expressly acknowledges and agrees that seller shall not be held liable for any claims, suits, actions, losses, liabilities, judgments, fines, penalties, costs or expenses whatsoever that may arise as a result of the use or misuse of any vehicles operated by Buyer separate from or in conjunction with the use of the Product, including without limiting the generality of the foregoing any personal injury claims, and that Buyer shall defend and hold harmless Seller from any such claims, suits, actions, losses, liabilities, judgments, fines, penalties, costs or expenses arising therefrom.

Buyer also expressly acknowledges and agrees that Buyer is solely responsible to provide for and ensure the proper training of drivers, owners or operators in the operation of the motor vehicle or motor vehicles, and the operation of the motor vehicle or motor vehicles in conjunction with use or operation of the Product.

Buyer also expressly agrees that where the Product is delivered by Buyer to a third party or end user, that such third party or end user shall be bound by the terms of this clause and that Buyer shall ensure that such third party or end user is fully aware of the indemnity created herein for the benefit of Seller and that the third party or end user execute, as part of a principal contract between the Buyer and third party or end user, or as a separate agreement, the clauses contained in this, substituting the name of Buyer with the name of the third party or end user where appropriate.

**14. Force Majeure**

Neither the Seller nor the Buyer shall be liable for failure to perform any obligations under any Contract, other than the payment of money, when the failure is caused by circumstances beyond the reasonable control of the affected party, including but not limited to flood, fire, strike or other labour disputes, accidents, wars, riot, insurrection, acts of government, governmental regulation or delays or failure to perform by supplier and subcontractors to the extent caused by circumstances beyond the reasonable control of such party.