

# **YesTek Ltd**

## **Conditions of Sale**

### **DEFINITIONS**

**1.1** The "Company" means YesTek Limited.

**1.2** The "Buyer" means the customer named on Sales Order Acknowledgement, Invoice and other documents and includes its servants and agents.

**1.3** The "Goods" means the goods listed overleaf and all equipment materials and accessories supplied with or in relation to them (including but not limited to plans drawings designs software and programming made available by the Company without separate charge).

### **2. GENERAL**

The terms of business set out herein (together with and as varied by the matters specified overleaf) shall be deemed to be incorporated in all contracts for the supply of goods by the Company to the exclusion of the Buyer's or any other conditions. Where any goods are appropriated to any contract for the supply of goods by the Company such appropriation shall be upon the terms set out herein. These terms shall not be varied or replaced by any previous dealings between the Company and the Buyer. No variation of these terms will be effective unless expressly agreed in writing between the Company and the Buyer.

### **3. ACCEPTANCE**

A tender or quotation is for information only and shall not be construed as a binding offer and a valid contract shall exist only upon the Company's written acceptance of the Buyer's order.

### **4. HEALTH & SAFETY AT WORK**

**4.1** The Buyer undertakes for the purpose of the Health & Safety at Work etc. Act 1974 that it will take all necessary steps to ensure so far as reasonably practicable that the Goods will be used in a manner which is safe and without risks to health. Without prejudice to the generality of the foregoing the Buyer undertakes that where the goods do not include safety guards the Buyer shall install suitable safety guards so as to ensure that the Goods will be safe and without risk to health at all times.

**4.2** Where the Goods are manufactured in accordance with the plans drawings or specifications supplied by the Buyer further warrants that such design of the Goods has been fully researched with a view to the discovery and elimination of any risks to health or safety to which the use of the Goods may give rise.

### **5. DELIVERY**

**5.1** Risk passes on delivery. Unless otherwise stated overleaf the Goods are sold ex the Company's works.

**5.2** Where the Company agrees to deliver the Goods other than ex the Company's works the cost of the Goods shall not include the cost of transportation delivery insurance in transit or any special handling or hoisting charges which shall be charged in addition at the Company's rates applicable from time to time.

## **6. PACKING**

The cost of the Goods shall not include any packing and packing will be charged in addition at the Company's rates applicable from time to time. Packing materials shall become the property of the Buyer on delivery.

## **7. DESCRIPTIVE MATERIALS DIMENSIONS AND WEIGHTS**

Any weights and/or dimensions quoted in respect of the Goods are approximate only. The Company shall not be under any liability for any representation condition warranty or guarantee contained in any brochure circular advertisement or descriptive literature or otherwise save as expressly agreed in writing between the Company and the Buyer. (After the Company's acceptance of a Buyer's order one set of certified outline drawings will be supplied to the Buyer if requested in writing).

## **8. PERFORMANCE**

Any performance figures given in the Company's quotation based upon experience and are such as the Company expects to obtain on tests on the Company's premises. The Company shall be under no liability for damages for failure to attain such figures unless the Company shall have specifically guaranteed performance figures in writing. Where any performance figure is guaranteed the figure is deemed to be subject to such tolerances and variations as may be reasonable. In the event of the Buyer alleging that the Goods fail to achieve the standard of specification stated in the Company's quotation the Buyer shall forthwith give notice thereof in writing to the Company. The Buyer shall not be entitled to reject the Goods until the Company shall have been given a reasonable opportunity to investigate and make such adjustment to the Goods as it may consider necessary except in so far as the Company is told in advance of the purpose for which the Buyer intends to use the Goods the Buyer accepts that the Goods are fit for the purpose for which they are normally intended to be used.

## **9. GOODS NOT MANUFACTURED BY THE COMPANY**

Goods supplied but not manufactured by the Company are sold subject to the Conditions of Sales of the manufacturer thereof but the Buyer shall be entitled to such benefits as the Company receive under any contract which the Company has with such manufacturer or under any guarantee which might be given to the Company in respect thereof but the Company shall be under no further liability in respect of such Goods. In the event of any failure by the manufacturer of such Goods for whatever reason to meet any liability which may arise by reason of any defect in such Goods or otherwise the Company shall be under no liability to the Buyer by reason thereof. Condition 20.1 shall not apply to such Goods.

## **10. CARRIAGE**

Where the Company agrees to deliver the Goods other than ex-works the Company will repair or at its option replace free of charge Goods lost or damaged in transit provided that the Company is given written notification of such loss or damage within such time as will enable the Company to comply with the carrier's conditions of carriage as affecting loss or damage in transit or where delivery is made by the Company's transport within (7) days following the receipt of the advice note

## **11. PRICE VARIATION**

All prices are based upon circumstances prevailing at the date of the tender or quotation. Until completion of an order the Company reserves the right to revise the price in accordance with increased labour materials or production costs and in the case of Imported Goods in accordance with variations in the rate of exchange or import duties. In addition value added tax is payable where appropriate.

## **12. TERMS OF PAYMENT**

The purchase price shall be payable 30 days from the date of the Company's invoice without any deviation whatsoever unless other terms have been agreed in writing by the Company.

## **13. STORAGE**

Save in such cases where the Goods are sold for delivery otherwise than ex the Company's works the Company will advise the Buyer when the Goods are available for delivery ex the Company's works and will thereupon issue an invoice in respect thereof. In the event that the Buyer shall fail to collect the Goods within 7 days from the date of such invoice the Company shall be entitled to store the Goods at the sole risk of the Buyer either on the Company's premises or with such person and upon such conditions as the Company shall think fit and the Buyer will indemnify the Company against any costs incurred by the Company in so doing. If the Company shall retain the Goods upon the Company's premises the Buyer will pay to the Company such reasonable price for the storage of the Goods as the Company shall specify.

## **14. INSPECTION AND TESTS**

No inspection of tests other than those which are the Company's standard practice will be carried out unless the details of the Buyer's requirements have been advised to the Company in the Buyer's official order and agreed by the Company in writing. If tests are to be carried out in the presence of the Buyer or its representative the Company reserve the right to make a charge for such tests before the tests commence. In the case of witnessed tests the Company will give the Buyer 7 days' notice prior to the tests taking place. If for any reason the Buyer's representative shall fail to attend at the agreed time then the Buyer shall be deemed to have accepted the test as carried out by the Company. If it is agreed the test be carried out on a customer's component then the Buyer shall be responsible for providing any jigs tools or other equipment which is not included in this contract and which is necessary for the carrying out of such test. If required by the Company the Buyer shall provide the necessary material work pieces or components and the Company accepts no responsibility for any damage caused to any such material work piece or component nor for any consequential damage arising out of such damage. In the event that the test material submitted by the Buyer is not in accordance with the specification for the material stated by the Buyer or in case of raw materials should the Buyer not fully disclose the properties of the material the Buyer shall accept full responsibility for and indemnify the Company in respect of any claim for compensation and pay for any loss or damage which may arise from the use of such material work piece or component during the test.

## **15. INSURANCE**

The Company shall not be required to give the Buyer any notice relating to insurance pursuant to Section 32(3) of the Sale of Goods Act, 1979 or otherwise.

## **16. WARRANTY**

**16.1** Where any Goods supplied by the Company appear to be defective the Buyer shall notify the Company within 14 days of the discovery of the apparent fault. The Company will then inform the Buyer whether or not the Company wishes the Goods to be inspected on site by its agents. If it does want an inspection the Buyer will give the Company every assistance in inspecting the Goods and carrying out tests on site. Subject to the Buyer duly performing all obligations imposed upon it where any Goods manufactured by the Company are shown to the Company's satisfaction to be defective due to faulty materials or workmanship the Company will at its option repair or replace Goods free of charge on site or at the Company's option, when they are delivered to the Company's works carriage paid provided that

**16.1.1** Any claim in this respect is received by the Company within 6 months of the date of despatch of the Goods.

**16.1.2** The Goods shall have been used solely for the purpose for which they were designed and within any performance limitations quoted by the Company.

**16.1.3** Any Goods repaired or replaced at the Company's works will be returned to the Buyer in the United Kingdom carriage paid or if the Buyer shall be outside the United Kingdom FOB Glasgow.

**16.2** Save as hereinbefore expressly provided the Company shall not be liable for any loss or damage whatsoever and howsoever arising occurring to the Buyer or any other person in connection with the Goods. All conditions warranties guarantees and stipulations express or implied by statute or otherwise as to the Goods or their quality or fitness for any purpose are hereby expressly excluded.

**16.3** Nothing in these conditions shall exclude or restrict any liability the exclusion or restriction of which is prohibited by Section 2(1) and Section 6(1) of the Unfair Contract Terms Act 1977 but this Condition 19(3) shall not apply to any international supply contract as described in Section 26(3) of the Unfair Contract terms Act 1977.

**16.4** In the event that any claim shall be made against the Company by any person in respect of any loss or damage or alleged loss or damage arising in connection with the Goods the Buyer will fully and effectually indemnify the Company in respect thereof.

## **17. PATENTS AND COPYRIGHT**

**17.1** The Company endeavours not to offer for sale Goods which infringe known or valid patents trademarks copyright or registered designs but shall not be liable and no claims shall be made against it by the Buyer for any damage or loss of profit arising from infringement of any patent trademark copyright or registered design or from any proceedings or threatened proceedings in respect of infringement of any patent trademark copyright or registered designs by any use or sale of the Goods.

**17.2** Where Goods include software or programming for the operation thereof or the Company provides advice to the Buyer in matters of technique or supplies Goods for carrying a technique into effect the provision of such software or programming the tendering of such advice or the supply of such Goods carries no guarantee that such programming or technique is free from patent design and copyright restrictions nor can the Company accept any liability arising from infringement or alleged infringement of patent design registration or copyright as a result of the Buyer using such software or program or following the advice tendered by the Company or using such Goods.

**17.3** Where Goods are manufactured in accordance with the plans drawings or specifications supplied by the Buyer the Buyer warrants that the use of such plans drawings and specifications does not infringe any patent copyright trademark or registered design and will indemnify the Company against all costs claims demands and expenses incurred by or brought against the Company in connection therewith.

**17.4** The copyright in any plans drawings designs software and programming comprising part of the Goods shall remain vested in the Company and the Buyer's rights in the same shall be limited to its own sole use exclusively for the purpose for which they were made available or if no such use is specified in writing or maintenance of the Goods.

## **18. FORCE MAJEURE**

The Company shall not incur any liability whatsoever under this contract for failure to carry out its obligations to the extent that such failure is caused by Force Majeure (which expression shall include with prejudice to its generality act of God war riot insurrection governmental regulations legal restrictions embargoes strikes labour disputes shortages of materials, fire, flood and tempest) and the time limit for the performance by the Company of any of its obligations under this contract shall be extended by a period or periods equivalent to that during which the performance of such obligation shall have been prevented by Force Majeure. If such performance is prevented for 3 months either the Company or the Buyer may upon 30 days' notice to the other terminate this contract with respect to any portion unperformed unless performance shall once again become possible during the said 30 day period.

## **19. ARBITRATION**

If at any time any question dispute or difference whatsoever shall arise between the Buyer and the Company upon in relation or in connection with the contract either party may give to the other notice in writing of the existence of such questions dispute or difference and the same shall be referred to the arbitration of a person to be mutually agreed upon or failing agreement within 14 days of receipt of such notice some person appointed by the President for the time being of the Institution of Electrical Engineers. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1950 (or any statutory amendment or re-enactment thereof).

## **20. TITLE TO PROPERTY**

**20.1** The Company shall transfer only such title to the Goods as it may have.

**20.2** Title to the Goods shall remain property of the Company until paid for in full. Title will be transferred to the Buyer upon payment in full to the Company of all sums owing to the Company by the Buyer (whether under this contract or otherwise).

**20.3** Until payment of all such sums the Buyer will hold the Goods as agent for the Company.

**20.4** The Buyer will not until title in the Goods is passed to it sell admix or consume the Goods or any part thereof. Subject to giving written notice of reservation of the Company's title in the Goods and requiring the Purchaser to pay the entire proceeds of sale to the Buyer the Buyer may sell the Goods as agents and bailees for the Company but as against any third party the sale by the Buyer shall be as principal. In the event that the Buyer shall receive the proceeds of any sale the entire proceeds shall be held by the Buyer in trust for the Company and shall not be mingled with any other monies but shall at all times be identifiable as the Company's money.

**20.5** At any time before title to the Goods shall have passed to the Buyer the Company may for the purpose of recovery of the Goods enter upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess them.

## **21. SEVERABILITY**

If any Condition or any part of a Condition is held to be invalid or unenforceable under any applicable status or rule of law then such invalidity or unenforceability shall not affect the remaining Conditions.

## **22. BUYER'S CONDITIONS OF PURCHASE**

No conditions of purchase adopted or used by the Buyer shall have effect notwithstanding that the Company shall have been notified of the existence thereof or otherwise.

### **23. LEGAL CONSTRUCTION**

This contract shall be construed and operated in all respects as contract made in Scotland and shall be governed by Scottish law and the Buyer hereby submits to the non-exclusive jurisdiction of the Scottish courts

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