

# SMS Wales

## General Terms and Conditions

### 1. DEFINITIONS

In the conditions, 'the Company' shall mean SMS Wales and 'the Purchaser' shall mean the person to whom the goods are invoiced or to be invoiced and (unless the context otherwise admits) any person to whom or for whose benefit the goods may be delivered. The 'goods' shall mean the articles or things or any other item or items service or facilities described in the order.

### 2. FORMATION OF CONTRACT

This Contract shall only take effect when the Company dispatches an Official Acknowledgement and Acceptance of Order to the Purchaser. No Contract shall be deemed to have been concluded prior to that date. Any Quotation or Price List given by the Company to the Purchaser (in whatever form the same may be expressed) shall not be binding on the Company and is given subject to these Conditions and does not constitute an offer to sell any goods to the Purchaser.

### 3. GENERAL

These General Conditions are deemed to be included in every Contract of Sale entered into by the Company unless expressly excluded or varied in writing and signed on behalf of the Company. They shall prevail over any other Conditions that the Purchaser may seek to impose.

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### 4. PRICES

Every Endeavour will be made to maintain prices quoted by the Company. However prices quoted by the Company are subject to increase without further notice at any time unless an official Purchase Order has been received from the Purchaser and confirmed by the dispatch of an Acknowledgement and Acceptance of Order from the Company in which case the price quoted on this will remain binding. The price shall be that expressed on the face of the invoice together with VAT and any other such duties or taxes that may be imposed from time to time. All goods will be invoiced in Pounds Sterling. Unless otherwise stated the cost of delivery will be invoiced directly by the Company to the Purchaser at the Company's rate ruling on the date of delivery.

### 5. DELIVERY AND DELIVERY DATE

Every effort will be made to adhere to the quoted delivery date but no liability to the Purchaser or to any other person is accepted by the Company. If, for any reason, delivery is delayed beyond that date delivery shall be deemed to be completed at the place of and on the date of signature of the Delivery Note. Mode of carriage will be at the company's discretion.

### 6. PACKING

Unless otherwise specified, goods are normally supplied in non-returnable cases at no extra charge. Where special packing cases are provided, these will still be considered non-returnable but a separate charge will be made to cover the cost thereof.

### 7. BREAKAGES, SHORTAGES AND NON-DELIVERY

The Company shall not be liable for shortages of delivery or damage to goods unless the Purchaser notifies the Company, such notice to be received by the Company within seven days of delivery, specifying the shortage or damage. In no case will the Purchaser be entitled to reject goods on the grounds of shortage. If the Purchaser does not receive the goods on the quoted delivery date the Purchaser must notify the Company, such notice to be received within twenty one days of the quoted delivery date. Every effort will be made by the Company to deliver the goods as quickly as possible thereafter but the Company will not be liable for non-delivery or late delivery. Where goods have been consigned by outside carrier, the Purchaser must comply in all respects with the Carrier's Conditions for notifying claims.

### 8. Defects Apparent on Inspection

8.1 The Customer shall only be entitled to claim in relation to defects in the Goods as supplied which are apparent on visual inspection if the Customer inspects the Goods and a written complaint specifying the defect is made to SMS Wales within seven (7) days of delivery, and SMS Wales is given an opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods.

8.2 If a complaint is not made to SMS Wales in accordance with this clause 8, the Goods shall be deemed to be in all respects in accordance with the Agreement (subject only to clause 9) and the Customer shall be bound to pay the Price for such Goods.

### 9. Defects not Apparent on Inspection

9.1 The Customer shall only be entitled to claim in respect of defects in the Goods supplied which are not apparent on visual inspection at the time of delivery if:

9.1.1 a written complaint is sent to SMS Wales as soon as reasonably practicable after the defect is discovered and subsequently no use is made of the Goods or alteration or interference made to or with the Goods before SMS Wales is given the opportunity to inspect the Goods in accordance with clause 9.4 below; and

9.1.2 The complaint is sent within 30 days of the date of delivery of the Goods.

9.2 The Customer shall not be entitled to claim in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse, nor in respect of any Goods to which alterations have been made without SMS Wales' consent.

9.3 SMS Wales shall not be liable for (and the Customer shall indemnify and keep indemnified SMS Wales against) any and all claims whatsoever arising from loss or damage suffered by reason of use of the Goods after the Customer becomes aware of any defect or after circumstances have occurred which should reasonably have indicated to the Customer the existence of a defect.

9.4 SMS Wales may within fifteen (15) days of receiving a written complaint in accordance with clauses 8.1 or 9.1 (or twenty-eight (28) days where the Goods are situated outside the UK) inspect the Goods and the Customer if so required by SMS Wales shall take all reasonable steps necessary to enable it to do so (including delivery of such Goods to SMS Wales at SMS Wales' request at the Customer's cost). For the avoidance of doubt, no Goods should be returned to SMS Wales without SMS Wales' prior consent.

#### 10. RISK AND TITLE

a. The risk in the goods shall pass to the Purchaser on completion of delivery or (if delivery is delayed by reason of any act or omission on the part of the Purchaser) at the time when delivery would otherwise have been completed and immediately such risk has passed the Purchaser shall keep the goods insured in their full replacement value (such value to include liability to duty and other taxes) until full payment in respect thereof has been made to the Company.

b. Until full payment has been made of all sums outstanding from the Purchaser to the Company in respect of the relevant goods.

- i. . property in the goods shall remain in the Company;
- ii. . the purchaser shall hold the goods as bailee on behalf of and in a fiduciary capacity for the Company and shall store the goods safely and in such a way as will not allow them to deteriorate and in such a way as to be identifiable as the property of the Company;
- iii. if any sum due to the Company by the Purchaser is outstanding or if the Company reasonably believes that any sum will not be paid in full when it becomes due to the Company may repossess the goods and the Purchaser hereby grants the Company an irrevocable license to enter upon any premises of the Purchaser for the purpose of so doing and the Purchaser shall be liable to the Company for any shortfall between the value of the goods when recovered by the Company and the amount due to the Company
- iv. if, in breach of the previous provisions of this sub-clause, the goods are sold the benefit of any contract for sale of the goods or the proceeds of any sale shall be held on trust for the Company absolutely and shall be placed in a separate account of the Purchaser and shall be identified as being in the beneficial ownership of the Company and the Purchaser shall be liable to the Company for any shortfall between the amount in the account and the amount due to the Company. This sub-clause shall not be deemed to be an authority to the Purchaser to sell the goods whilst the property therein remains with the Company.

#### 11. PAYMENT

Payment must be received and cleared within 30 days of the date of the invoice by cheque drawn in a U.K. bank. Interest will be chargeable by the Company against the Purchaser on any payment overdue at a daily rate equivalent to the annual rate of 4% above the base rate of the HSBC Bank PLC from time to time applicable until the sum due is paid in full. As long as any sums due (whether under this contract or not) from the Purchaser are outstanding the Company shall be entitled to withhold delivery of any goods.

#### 12 TERMINATIONS OR SUSPENSION

The Company reserves the right to cancel or to suspend delivery or any goods to the Purchaser. a. If compelled to do so by reasons beyond its control or b. in the event of failure by the Purchaser to pay an outstanding sum due to the Company within one month after the due date of payment or c. if there is any default or breach of any of the Purchaser's obligations hereunder or d. if any distress, execution or other legal process shall be levied upon or served out against the Purchaser's property or assets or if the Purchaser shall make an offer to make any arrangement or composition with its creditors or commit any act of bankruptcy or if any petition or receiving or manager on behalf of a creditor of all or any of its assets shall be appointed, then (without prejudice to any right of action or remedy which shall be accrued or shall accrue thereafter to the Company) in each and every case the Company shall have the right at any time to determine the contract and to cancel any outstanding delivery and to stop any goods in transit without any liability to compensate the Purchaser and, notwithstanding any other provisions, payment in respect of any delivery already made shall be immediately due.

#### 13. CANCELLATION

The company reserves the right from the date hereof to refuse purported cancellation of any order and to demand payment of the full price for the same, although the Company may accept any cancellation upon receiving full indemnification from the Purchaser for actual costs and losses incurred.

#### 14. LIABILITY

If any materials and equipment supplied by the Company under the Contract is found to be defective due to faulty manufacture but not due to installation during a period of not exceeding twelve months after the date of delivery to the Purchaser in the case of materials and equipment, then subject to the proviso hereto, the Company will (free of charge to the Purchaser) replace and reinstate such faulty materials and equipment as the case may be provided that

- a) The Purchaser is vigilant in checking for faults and immediately ceases to use the faulty materials and equipment if there is any likelihood whatsoever of further deterioration.
- b) Written notice giving full details of such alleged defective materials and equipment is given by the Purchaser to the Company immediately on the discovery thereof by the Purchaser and before the expiration of twelve months after the date of delivery.
- c) . The alleged defect is proved to the reasonable satisfaction of the Company to be due to faulty manufacture and

- d) At no time after the date of delivery has any employee of the Purchaser or any third party (with the knowledge and approval of the Purchaser or otherwise) interfered with, tampered, altered or attempted to interfere with, tamper or alter the said materials and equipment.

#### 15 ADDITIONAL WORKS

Where it is necessary for the Company's engineers to attend on site other than in the normal course of events or for those engineers to perform duties outside normal requirements then such time will be charged by the Company to the Purchaser at the Company's daily rate for commissioning applicable at the time the work is undertaken plus expenses. Where it is necessary for the Company to provide additional materials equipment for spares then these will be charged to the Purchaser at the Company's standard list prices for such items at the time the materials are supplied. Such additional work will not be executed by the Company unless it is the subject of a written order from the Purchaser or agreed on one of the Company's Site Purchaser Order Forms and signed by an authorized official of the Purchaser. For such additional work the Purchaser shall provide the Company free of charge with such utilities and facilities as are required for the work to be undertaken.

#### 16 MATERIALS AND EQUIPMENT ON TRIAL

Where materials or equipment are provided on a trial basis or equipment shall remain the property of the Company at all times. The Purchaser of such items shall ensure they are adequately insured and protected at all times. The Purchaser shall ensure that all items received are ready for collection by the Company at the end of the agreed trial period unless an extension has been granted by the Company in writing prior to the end of the original agreed trial period, or the Purchaser has agreed to purchase the equipment or materials and issued their official purchase order which has been confirmed by the Company's Acknowledgement of Order and Acceptance of Order. In this case the Company shall invoice in the normal way including delivery charge except that the invoice shall be payable immediately on receipt and no credit shall be allowed. If after receiving an item back from the trial the Company finds that parts are missing or that the item is damaged then the Company will arrange for cleaning and invoice the Purchaser at its full list price for those parts or items concerned. If an item is not ready for collection on the due date then the Company reserves the right to invoice the Purchaser at a daily rental for each day beyond the agreed trial period. If as a result of any delay the Company incurs additional collection, telephone, administration or other charges then the Company reserves the right to invoice for all additional charges incurred. If an item is not ready for collection after an agreed trial period within 30 days of the completion of that trial period then the Purchaser will be deemed to have become the Purchaser of that item and will be invoiced for it at the list price on the date of the invoice. If any delay occurs in the Company collecting the item after the end of an agreed trial period then the Purchaser will hold the item for the Company in a safe and secure place at no charge pending collection by the Company.

#### 17 RENTALS

Rental will be covered by a separate agreement.

#### 18. PURCHASERS' INDEMNITY

The Purchaser undertakes and agreed to indemnify and save harmless the Company against any and all damages, losses, costs, expenses and claims of any nature whatsoever incurred, or suffered by the Company as a direct or indirect result of any act or omission or breach of any duty imposed whether by Statute, Order, Regulation, By-Law or Common Law upon the Purchaser, his servants or agents and/or the owner of the contract site or the employer of any labor working on contract site.

#### 19. INSURANCE

The Purchaser shall effect and keep in force from delivery policies of insurance against the Purchaser's liability under Common Law or any Statute in force for the time being in respect of injuries to persons or property arising out of and in the course of the execution of the Contract by the Company.

#### 20. IMPLIED CONDITIONS AND WARRANTIES

These Conditions contain all the terms under which contracts are entered into by the Company and any express or implied statement, condition or warranty, statutory or otherwise not stated herein is expressly excluded except insofar as such exclusion is prevented by law, as are any conditions of the Purchaser purports to impose.

#### 21. WAIVER AND SEVERANCE

- a) . No failure, delay or indulgence on the part of the Company in exercising any power or right conferred upon them herein or in any specific agreement shall operate as a waiver of such power or right.
- b) . Further, a single or partial exercise of any such power or right shall not preclude any other or further exercise thereof or the exercise of any other such power or right hereunder or any specific agreement.
- c) . If any provision hereof or any specific agreement shall be held by a Court of competent jurisdiction to be invalid or void able such provision shall be struck out and the remainder thereof shall stand in full force and effect.

#### 22. FORCE MAJEURE

The Company shall not be liable for any delay in performing obligations or for failure to perform obligations if the delay or failure results from circumstances beyond its control including but not limited to force majeure, act of God or governmental act, fire, explosion, accident, civil commotion, industrial dispute or impossibility of obtaining materials.

#### 23. NOTICES

Any notice to be given hereunder shall be in writing and be sufficiently served by being hand delivered or sent by registered post or recorded delivery or telex addressed to the registered office of the relevant party and any such notice if so hand delivered shall be served when deposited at the address in question. If so posted shall be deemed served 48 hours after the day on which it was posted and if sent by telex or fax shall be deemed to be served on dispatch subject to receipt of the appropriate answerback code.

#### 24. GOVERNING LAW

The Contract shall be construed in accordance with English Law. Any dispute arising out of or in connection with it shall be subject to the jurisdiction of the English Courts of Law.