

# TERMS AND CONDITIONS OF SALE

1. **GENERAL**
- 1.1 In these Conditions
- (a) "the Company" means SMART PAYMENT TECHNOLOGIES LIMITED (Registered Office: Walker Road, Bardon Hill, Coalville, Leicestershire, LE67 1TU, Registered number: 04623031).
- (b) "Customer" means the person placing the order for the goods or (as the case may be) the person to whom the quotation is submitted by the Company;
- (c) "Goods" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part of them);
- (d) "Services" means any services agreed in the Contract to be supplied to the Customer by the Company;
- (e) "Contract" means any contract between the Company and the Customer for the sale of Goods and/or provision of Services, incorporating these Conditions;
- (f) headings are inserted for the sake of convenience and do not affect the construction of these Conditions;
- (g) statute references include any regulations made thereunder and in either case any re-enactments thereof.
- 1.2 The Contract shall arise between the Company and the Customer upon the Company's acceptance (at its absolute discretion) of the Customer's order or (if earlier) when the Company commences manufacture or dispatch of the Goods or performance of the Services.
- 1.3 Save as expressly agreed by the Company in writing, any terms or conditions contained or referred to in any purchase order or other document or communication issued or made by the Customer shall have no effect insofar as they purport to vary or are inconsistent with these Conditions and the Company shall not be deemed to have accepted any such terms or conditions by reason of its failure expressly to object to the same.
- 1.4 The Company's quotation is merely an invitation for an order subject to these Conditions. No Contract will result until the Company has confirmed the Customer's order in writing by its authorised representative. Such Contract will incorporate and be subject to these Conditions.
- 1.5 No person has the authority on behalf of the Company to vary any of these Conditions except a Director of the Company and then only in writing signed by him.
- 1.6 Once the Contract arises between the Company and the Customer the Customer cannot cancel or vary the same except with the prior written consent of the Company and then only upon the Customer indemnifying the Company against any loss, liability, loss of profit (direct and indirect) and any additional administrative and other costs incurred.
- 1.7 Any Contract arising between the Company and the Customer in accordance with paragraph 1.2 shall be subject to English law and the Company and the Customer submit to the non-exclusive jurisdiction of the English Courts in relation thereto. The UN Convention on the International Sale of Goods 1980 (the Vienna Convention) shall not apply to the Contract.
- 1.8 Any notice to be given under these Conditions may be sent by first class (or where applicable airmail) pre-paid post addressed (a) in the case of a notice to the Company to its address stated above or (as the case may be) on its quotation or (if none is so stated) to its registered office; (b) in the case of notice to the Customer to its address stated on its order form (or as the case may be) any document accepting the Company's quotation or (if none is so stated) either to its principal place of business or its registered office for the time being; or (c) (in either case) to such other address as the Company or the Customer shall have notified to the other for this purpose. Any notice so given shall be deemed to have been received and given forty-eight hours (or if sent by airmail 10 days) after the same was posted.
2. **CUSTOMER CREDIT**
- 2.1 If the Company notifies the Customer before or upon acceptance of its order that the Company requires references for the Customer any contract shall conditionally upon the receipt by the Company of one bank and two trade references for the Customer satisfactory to the Company. If any such references are not received by the Company within 14 days of notification by the Company that it requires such references (or any longer period specified by the Company in writing), or if the Company notifies the Customer that any references received are not satisfactory, the Company shall be deemed to have not accepted the Customer's order and shall not be obliged to supply any Goods or Services and neither party shall be under any further liability to the other in respect thereof.
3. **DELIVERY**
- 3.1 Any time or period for delivery given by the Company shall be given in good faith but shall be an estimate only and not a term of the Contract and the Company shall not be liable for any delay in delivery or any consequential or other loss arising therefrom howsoever such delay may be caused.
- 3.2 Domestic Delivery within the United Kingdom - The Company shall deliver the Goods to the Customer either by post or by other carrier. The risk of loss of or damage to the Goods shall pass to the Customer at the time the Goods are delivered to the delivery location set out in the Contract or otherwise agreed by the Company and the Customer in writing. Overseas Delivery - The Company shall deliver the Goods to the delivery location set out in the Contract. Unless otherwise agreed by the Company and the Customer in writing, the Company will be responsible for transporting the Goods to the delivery location but will not be responsible for any duty, taxes, customs clearance or other local levy which shall be paid by the Customer. Subject to the Customer promptly obtaining any required customs clearance and/or (as the case may be) promptly paying any duty, taxes or other local levy due in respect of the Goods, risk of loss of or damage to the Goods shall remain with the Company until the time at which the Goods are delivered to the delivery location set out in the Contract.
- 3.3 The Customer shall pay the cost of delivering and packaging the Goods in addition to the purchase price of the Goods and shall be responsible for all import or export duties, charges or levies.
- 3.4 If the Customer fails to accept delivery of the Goods the Company shall be entitled without prejudice to any other rights it may have to store the Goods at the cost and risk of the Customer.
- 3.5 Any claim in respect of any loss of or theft of or damage to the Goods prior to delivery or missing Goods must be notified to the Company in writing within two days of receipt of the Goods or (in the case of Goods not delivered) the date of expected receipt. The Company shall not be liable in respect of any claim notified to it after such time.
4. **INSTALLMENTS**
- 4.1 Except where otherwise expressly agreed in writing by the Company, the Company shall be entitled to deliver the Goods by one or more instalments. Where the Goods are delivered in instalments, whether at the Company's election or at the request of the Customer, each such instalment shall be treated as a separate contract for the purpose of these Conditions and shall be invoiced and paid for separately.
- 4.2 Where the Goods are delivered to the Customer by instalments or over a period and the Customer has failed to pay on its due date any invoice for Goods already delivered the Company shall be entitled (without prejudice to any other rights it may have) to suspend delivery of further instalments of Goods until all amounts outstanding to the Company from the Customer shall have been paid or to terminate the Contract.
5. **PRICES**
- 5.1 Any price quoted by the Company for the Goods or Services is subject to revision by the Company at any time without notice to take account inter alia of any increase in the cost of the Goods or Services to the Company or any other costs and expenses of the Company occurring before the date of delivery of the Goods or provision of Services to the Customer.
- 5.2 Except where otherwise expressly stated by the Company in writing, any price quoted by the Company for the Goods is the ex-works price thereexclusive of the cost of packaging and delivery.
- 5.3 Except where otherwise expressly stated in writing by the Company, all prices quoted by the Company are in UK pounds sterling and exclusive of value added tax which shall be charged and paid by the Customer at the rate in force at the date the Goods or Services are invoiced.
6. **PAYMENT AND INTEREST**
- 6.1 The Goods (and any instalment in the case of delivery by instalments) and Services shall be paid for in UK pounds sterling within thirty days of the date of the relevant invoice or delivery of Goods or provision of Services whichever is earlier.
- 6.2 Time for payment shall be of the essence. In all cases payment on the due date shall be a condition precedent to further performance by the Company, and without prejudice to any other rights, the Company may suspend performance under the Contract or any other contract the Company has entered into with the Customer until full payment for Goods or Services supplied has been received by the Company.
- 6.3 The Company shall be entitled to charge interest (accruing from day to day) at the rate of 3% per annum above National Westminster Bank Plc base rate for the time being on all sums overdue for payment by the Customer hereunder (whether before or after judgment) and all such interest so charged shall be payable by the Customer to the Company on demand. The Company reserves the right to claim statutory interest under The Late Payment of Debts (Interest) Act 1998.
- 6.4 All payments due to the Company shall be made in full without any form of set-off or other deduction unless the set-off or deduction is the subject of a court judgment in the Customer's favour.
7. **TITLE TO THE GOODS**
- 7.1 Full legal beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until:
  - (a) payment in full, in cash or cleared funds, for all of the Goods has been received by the Company; and
  - (b) all other money payable by the Customer to the Company on any other account or under the Contract or any other contract has been received by the Company.
- 7.2 Until title to and property in the Goods passes to the Customer:
  - (a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and insure them without any charge to the Company and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods whether or not supplied by the Company and are clearly identified as belonging to the Company and the Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so;
  - (c) the Company may at any time demand and without prior notice require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in Condition 12.1 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due;
  - (d) for the purposes of this Condition 7 the Company, its employees and agents will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer or any other location where any of the Goods are situated at any time without prior notice;
  - (e) the Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that title to and property in the Goods has not passed to the Customer;
  - (f) the Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business and to pass good title in the Goods to its customers if they are purchased in good faith without notice of the Company's rights. This right shall automatically cease on the occurrence of any event set out in Condition 12.1 and/or if any sum owed to the Company by the Customer is not paid when due; the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without limiting any other right or remedy of the Company) forthwith become due and payable.
- 7.3 The Company's rights and remedies set out in this Condition 7 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies under the Contract or in law or equity.
8. **WARRANTIES AS TO QUALITY AND LIMITATIONS OF LIABILITY**
- 8.1 So far as it is able, but without assuming any liability itself, the Company will transfer to the Customer the benefits of all warranties or guarantees in relation to the Goods which the Company receives from their suppliers to the Company.
- 8.2 Subject to the following conditions, the Company accepts no liability for any loss damage injury or expense arising directly or indirectly from any fault defect failure or breakdown of the Goods or any part thereof.
- 8.3 Save as set out in these Conditions all guarantees representations conditions and warranties as to quality, condition, workmanship, fitness for any purpose or otherwise, whether expressed by statute or common law, are hereby expressly excluded PROVIDED THAT the provisions of this paragraph shall not apply so as to exclude or purport to exclude the liability conferred on a seller by the provisions of section 12 Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 8.4 The Company warrants that it will carry out the Services under the Contract with reasonable care and skill. This warranty will be the only warranty given in respect of such Services.
- 8.5 Subject to Conditions 8.12 and 8.13 the liability of the Company for any defective Goods supplied to the Customer under a Contract is strictly limited to the rights contained in this Condition 8 and any liability of the Company for defective Goods supplied shall be limited (at the Company's option) to crediting the Customer with the purchase price or making good any defect by either repairing or replacing the relevant Goods.
- 8.6 Goods will only be regarded as defective in the event that:
  - (a) the Goods are proved to be defective to the reasonable satisfaction of the Company; and
  - (b) the Goods are returned to the Company for inspection at the expense of the Customer (such expense to be reimbursed by the Company if the Goods are proved to be defective); and
  - (c) the defect appears and is notified to the Company (in writing) within the period of (a) one (1) month following delivery of the Goods where the defect would have been apparent upon reasonable inspection at the time of delivery (whether or not such inspection takes place); or (b) three (3) months in all other cases; and
  - (d) the defect is solely attributable to failure of the Goods to comply with any specification prepared or supplied by the Company or poor workmanship, faulty materials or faulty packaging and the defect is not for any other reason such as any alteration, modification, misuse of the Goods use in an unapproved or defective specification supplied by the Customer to the Company, or to fair wear and tear. In the event that the Goods are not defective for the purpose of Condition 8.6, the Customer shall reimburse the Company's reasonable costs of inspection and any subsequent return of the Goods to the Customer.
- 8.7 For Services, the Company's sole liability in respect of defective Services is to resupply the Services and/or rectify the Service output supplied where possible or if the Company is unable to do so then to repair or credit the Customer with an appropriate adjustment to the price reflecting the degree of failure. This liability is subject to notifying the Company as soon as possible after the Customer becomes aware of a failure of the Services and providing any appropriate opportunity to resupply or rectify.
- 8.8 Notwithstanding Conditions 8.1 to 8.7 (inclusive) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the greater of 1.25 times the price of the Goods and/or Services in respect of which the Customer suffered or incurred such loss or damage or £1000.
- 8.9 The Company shall not be liable to the Customer for any loss of profit, loss of revenue, loss of production or other economic loss (in each case whether such loss is direct, indirect or consequential), or for any indirect or consequential loss, damage, costs or expenses whatsoever howsoever caused which arises out of or in connection with the Contract (whether in contract, tort (including negligence), or breach of statutory duty or otherwise), or for any liability incurred by the Customer to any other person for any economic loss, claim for damages or awards howsoever arising from the Goods, Services or otherwise.
- 8.10 No liability for damages shall accrue in circumstances where a default is remediable until such time as the Customer has given to the Company 30 days' written notice to remedy and the Company has failed to do so.
- 8.11 The price of the Goods and/or Services has been calculated on the basis that the Company will exclude or limit its liability as set out in the Contract and the Customer by placing an order agrees and warrants that the Customer shall insure against or bear the risk of any loss for which the Company has excluded or limited its liability in the Contract and the Company shall have no further liability to the Customer. The Customer expressly agrees that the cost of the Goods or Services would inevitably be greater if a higher liability was accepted. The Company may be prepared to increase the limit of liability in return for an increase in the price.
- 8.12 Nothing in this Condition 8 or elsewhere in these Conditions shall operate to exclude or restrict the Company's liability for death or personal injury resulting from negligence (as defined in section 1(1) of the Unfair Contract Terms Act 1977) or the Company's liability for fraud or fraudulent misrepresentation or the Company's liability for any matter for which it would be unlawful for the Company to exclude or restrict liability.
9. **DESCRIPTIVE MATTER AND ILLUSTRATIONS**
- 9.1 All statements descriptions representations specifications performance figures drawings particulars weights and dimensions in any quotation catalogue advertisement price list leaflet or other publication or document issued by the Company are approximate only and shall not be construed as enlarging varying or overriding these Conditions or of forming part of any contract between the Customer and the Company.
- 9.2 The property and copyright in all drawings specifications descriptions and other documents supplied by the Company in relation to the Goods shall remain vested in the Company.
- 9.3 The Company reserves the right to update any specification of Goods (including any spare parts supplied) without notice to the Customer provided that the specification shall not be reduced nor changed from any specifically agreed specification.
10. **PATENTS, TRADE MARKS ETC**
- 10.1 The Customer shall not claim ownership of any patents trade marks trade names copyrights knowhow or designs (registered or unregistered) in relation to or as created pursuant to the Goods or Services and shall not take any action which might infringe any patent trade mark trade name copyright design or other form of protection for any invention discovery improvement design mark or logo in relation to the Goods and the Customer shall indemnify the Company and keep it indemnified from and against all costs claims liabilities proceedings damages and expenses arising directly or indirectly as a result of any breach of the foregoing obligation by the Customer.
- 10.2 The Customer shall notify the Company immediately of any infringement or apparent or threatened infringement of or any actions claims or demands in relation to any patent trade mark design or other form of protection for any invention discovery improvement design mark or logo in relation to the Goods and the Customer shall provide the Company with the Company's expense with all assistance which the Company may reasonably require in connection therewith including but not limited to the prosecution of any actions which the Company may deem necessary for the protection of any rights in relation to the Goods and if so requested by the Company in relation to any claim or action brought against the Customer shall authorise the conduct of the same and all negotiations for the settlement of the same by the Company at the Company's expense.
11. **FORCE MAJEURE**
- 11.1 The Company shall not be liable to the Customer or incur any liability for the failure to perform or for the delay in the performance of any of its obligations hereunder where such failure or delay is due wholly or in part directly or indirectly to causes beyond its reasonable control including but not limited to firestorm flood or earthquake explosion accident war acts of the enemy riots civil disorders sabotage strikes lockouts industrial disputes labour shortages work delays or stoppages power utility or energy failures or shortages of appropriate materials or unavailability of supplies or breakdown in machinery or equipment transportation embargoes or delays inclement weather delay on the part of third parties (including other traded acts or omissions of the Customer Acts of God acts or regulations or priorities of the government or agents thereof). For the avoidance of doubt, non-payment of money shall not be capable of being excused by force majeure unless the same is directly prevented by operation of law or government action.
- 11.2 If the failure to perform or delay in performance of the Contract continues for a continuous period in excess of 3 months then either party shall be entitled to give notice in writing to the other to terminate the Contract.
12. **TERMINATION BY THE COMPANY**
- 12.1 The Company may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel any outstanding provision of the Services or delivery of the Goods or stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Company if:
  - (a) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
  - (b) the Customer fails to remedy a breach of its obligations under the Contract which is capable of remedy or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days;
  - (c) any distress execution or diligence is levied upon any of the Customer's goods or property and is not paid out within 7 days of its being levied; the Customer (being a partnership) or any partner of the Customer offers to make any arrangements with or for the benefit of the creditors of the Customer or any partner of the customer or there is presented in relation to the Customer or any partner of the Customer a petition of bankruptcy;
  - (e) the Customer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer calls a meeting for the purpose of passing a resolution to wind up its company, or such a resolution is passed (other than for a bona fide solvent amalgamation or reorganisation where the resulting company agrees to be bound by or to assume the obligations imposed on the Customer under the Contract) or the Customer has an administrative receiver or receiver or manager appointed (to the whole or any part of the Customer's business, undertaking, property or assets or if a notice of intention to appoint an administrator is given by the Customer or by a qualifying floating charge holder or the Customer has an administrator appointed).
  - (f) the Customer (being an individual) makes any arrangements with or for the benefit of his creditors or either petitions for or has a petition for his bankruptcy presented;
  - (g) the Customer ceases, or threatens to cease, to carry on business; or
  - (h) the Customer reasonably believes that any of the events specified in Condition 12.1 (a) to (g) above is about to occur in relation to the Customer.
- 12.2 Notwithstanding any such termination or suspension in accordance with Conditions 11 or 12.1 above the Customer shall pay the Company at the rate per price applicable to the Contract for all Goods delivered or Services provided up to and including the date of suspension or termination and the termination of the Contract or any contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any sum owing or to become owing to the other.
13. **GENERAL**
- 13.1 Each provision of these Conditions is independent and separate from all other terms and if any provision is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.2 The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company.
- 13.3 The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person.
- 13.4 A person who is not a party to the Contract (including without limitation any employee, officer, agent, representative or sub contractor of either party) shall not have the right to enforce any term of the Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise save that the benefit of these Conditions shall apply equally to and the Conditions shall be enforceable by any company which is the Company's ultimate holding company or any subsidiary company of the Company's ultimate holding company which may be involved in the provision of the Goods and/or Services.
- 13.5 Unless otherwise stated, a right or remedy described in these Conditions is in addition to, and does not prejudice or affect, any other terms, rights or remedy implied by or available under these Conditions or by statute or at law.
14. **RESTRICTIONS**
- 14.1 The Customer acknowledges and understands that the United States and other countries place restrictions on the sale or exportation of Goods to certain countries, including (without limitation) Iran, Cuba, Syria, Sudan, North Korea and the region known as the Crimea region of the Ukraine prior to the Russian Federation's actions in March 2014 related to annexation of such region (which region may also be referred to as the Republic of Crimea and Sevastopol) (the "Restricted Countries"). Accordingly:
  - 14.1 The Customer agrees that it will not sell, re-sell, license, re-export, distribute, transfer, or otherwise make available for use any Goods supplied pursuant to the Contract or any component or part thereof (including without limitation software components), directly or indirectly, to any of the Restricted Countries.
  - 14.2 The Customer further agrees that in its conduct of business with or in connection with Goods supplied pursuant to the Contract, it will comply with all applicable anti-bribery laws, including (without limitation) the U.S. Foreign Corrupt Practices Act, which prohibit making, authorizing, offering or promising to give monies or any other thing of value, directly or indirectly, to any government official or any other person for the purpose of securing any improper or unfair advantage or obtaining or retaining business in connection with such business activities.
  - 14.3 In the event that the Customer or its agents or employees fail to comply with any of the restrictions set out in this Condition 14, the Company shall be entitled to immediately terminate the Contract without liability or obligation to the Customer. In addition, the Customer hereby indemnifies the Company and its respective affiliates, directors, officers and employees for all costs, expenses, damages, claims, charges, penalties, fines and other losses (such losses to include but not be limited to any amounts payable by the Company pursuant to any indemnity obligation in such circumstances) that arise in connection with any breach of or failure by the Customer or its agents or employees to comply with the restrictions set out in this clause.
  - 14.4 Where the Customer is authorised to sell, licence or otherwise make available Goods supplied pursuant to the Contract to third parties, it shall procure that each of its customers for such Goods enters into a binding contractual commitment which requires such customer to comply with the requirements set out in this clause.
  - 14.5 The Company shall have the right to conduct audits of the Customer's activities related to the Goods supplied pursuant to the Contract to determine compliance with the restrictions set out in this Condition 14 and if required by the Company a director (or other authorised officer) of the Customer shall provide written certification of the Customer's compliance with the restrictions contained in this clause.