



Phoenix House, 2 Phoenix Park, St Neots, Cambridgeshire, PE19 8EP  
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## SystemWare Europe Ltd General Terms & Conditions

### 1. DEFINITIONS AND INTERPRETATION

(a) In these conditions:

**"The Company"** means SystemWare Europe Limited a company incorporated in England and Wales under registration number 03916672 having its registered office at Phoenix House, 2 Phoenix Park, St Neots Cambridgeshire PE19 8EP.

**"The Buyer"** means the persons, firm or company entering into the contract with the Company.

**"The Conditions"** means the conditions contained in this document relating to the sale of the goods by the Company.

**"The Contract"** means the contract between the Company and the Buyer, created upon acceptance by the Company of the Order which includes the Conditions.

**"The Goods"** means the goods supplied hereunder in accordance with the Order.

**"The Order"** means the order placed by the Buyer, based on the Quotation.

**"The Quotation"** means the quotation provided by the Company to the Buyer.

**"Services"** means the description of the services to be provided as detailed in the Purchase Order.

(b) In these Conditions, the following rules apply:

- i. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- ii. A reference to a party includes its personal representatives, successors or permitted assigns.
- iii. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- iv. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- v. A reference to writing or written includes faxes and e-mails.

### 2. GENERAL

(a) All quotations issued by the Company are subject to these Conditions and shall form part of any subsequent contract made between the Company and the Buyer in relation to the supply of goods to the exclusion of all other terms and conditions unless otherwise expressly agreed in writing by the Company. The Buyer shall be deemed to have accepted these conditions upon placing the Order.

(b) No addition to or variation from these terms and conditions shall have effect unless the same are expressly accepted by the Company in writing under the hand of a director of the Company.

(c) The Conditions, together with (once accepted by the Company) the Order and the Quotation represent the entire agreement and understanding of the parties and supersede any prior agreements, representations or undertakings in relation to the goods/services supplied pursuant to the Contract.

(d) The Quotation given by the Company shall not constitute an offer. The Quotation shall be valid for 30 days, unless otherwise stated.

(e) A purchase order or contract should be supplied by the Customer to the Company in order that goods and/or services detailed therein are supplied at the price quoted and by an agreed delivery date. A purchase order should normally be supplied in writing but from time to time may be given verbally. In both cases, the Company will supply a Sales Order Acknowledgment and any errors or omissions should be notified to the Company by the Customer within 72 hours of receipt, this may take the form of an email, letter, or in some cases be verbal. A Sales Order Acknowledgment will render the Customer liable to procure the goods and services detailed therein, and cancellation or modification to the purchase order may only be possible at the absolute discretion of the Company.

(f) Any cancellation or significant modification of a purchase order by the Customer may result in administration or production costs having already been absorbed by the Company. In such cases the Company reserves the right to invoice these costs and the Customer shall be liable to pay these costs. Failure to pay costs following the cancellation or modification of a purchase order may form a breach of contract.

(g) Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or websites are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Contract or have any contractual force.

(h) The Contract shall be formed between the Company and the Buyer at the time of acceptance by the Company of the Order such acceptance shall be notified to the Buyer by the Company in writing.

(i) To the extent that the goods are to be manufactured in accordance with a specification supplied by the Buyer, or the Buyer's customer/client, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the specification. This condition 2(i) shall survive termination of the Contract.

(j) The Company reserves the right to amend the specification of the goods if required by any applicable statutory or regulatory requirements.

### 3. PRICE

(a) The price for goods will be as provided in the Quotation, unless variation or amendment is agreed in writing under the hand of a director of the Company.

(b) The prices quoted are in the currency shown on the Quotation and are net of any VAT or other sales tax which may be applicable from time to time. These prices are based on the exchange rate at the time of Quotation, should this vary prior to the dispatch of the goods, by more than  $\pm 2\%$  then the Company reserve the right to amend the prices accordingly.

(c) The Company reserves the right to vary the price quoted to the extent that such variation is required to cover increases in the cost of supplying the goods between quotation and delivery to the Buyer. Prices at the date of delivery shall therefore prevail.

(d) All prices, including shipping, quoted are based on the quantities specified. Orders that are placed for different quantities will not be accepted and a new quotation may be required for the correct quantities.

(e) All quotations are valid for 30 days unless otherwise stated on the quotation or agreed in writing. Any orders received that are based on an invalid quotation will be rejected.

(f) In the event of a price variation pursuant to conditions 3(b) or 3(c) above then the Company shall notify the Buyer who may then accept or cancel the Order. The Company shall not be required to dispatch the goods until confirmation of the revised price has been received in writing from the Buyer. Once such confirmation has been received the Contract shall be deemed varied accordingly notwithstanding any other provision contained within the Contract.

### 4. PAYMENT

(a) The Company reserves the right to credit check any Buyer. Payment terms may be subject to change due to credit check findings.

(b) Payment by the Buyer for the goods shall be made within 30 days from the date of the Company's invoice unless otherwise agreed and confirmed to the Buyer in the Company's invoice.

(c) Transaction fees incurred by SystemWare Europe that have not originated from our own bank may incur additional administration charges. The payer is responsible for their own bank/sender charges and fees.

(d) In the event of late or part-payment, interest at the higher rate of:

- i. 5% per annum; and
- ii. the rate payable pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act"), or such other legislation which may from time to time amend, vary or replace the Act. shall be charged on the sum outstanding on a daily basis until full payment is received together with any statutory compensation payable under the Act.

### 5. DELIVERY

(a) The appointment of carriers is at the Company's sole discretion unless the Buyer indicates and the Company agrees a specific carrier prior to the date of the Quotation.

(b) Whilst the Company will endeavour to deliver the Goods by the specified date or dates for delivery, such date or dates are estimated dates only and the Seller shall not be liable for failure to deliver on such dates. Time shall not be of the essence in relation to those dates. The Company will notify the Buyer of any substantial change in those dates.

(c) The Company will consider the repair or replacement of any goods damaged or lost in transit only where delivery is made by the Company's carrier providing that the Buyer shall give written notice to the Company of such damage or loss within 3 days of the date of physical delivery of the goods.



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(d) Some items are subject to export control legislation. Paperwork may be required to fulfil these obligations. If the goods are to be passed onto a third party then it is the Buyer's responsibility to check the legal requirements of such transactions.

#### 6. RISK AND PROPERTY

(a) Risk in the goods passes on delivery or (where the Buyer arranges carriage of the goods) upon collection from the Company's premises or such other premises as the Company may agree in writing.

(b) Title in the goods will not pass to the Buyer until payment is received in full of all invoices raised by the Company to the Buyer for all goods supplied.

(c) Where the Buyer sells goods on to a third party title will pass immediately before the goods are delivered to such third party.

(d) Where goods are attached to, or incorporated in other goods, or altered, title will not pass by virtue of such attachment or alteration, where the goods can be detached or removed.

(e) If the Buyer is overdue in payment for the goods or other goods supplied by the Company, the Company may recover and sell the goods.

(f) Until payment for the goods and all other goods which are supplied under these conditions:

- i. The Buyer shall hold the goods upon trust for the Company.
- ii. If the goods are sold the Buyer shall hold the proceeds of sale on trust for the Company in a separate bank account specifically designated for this purpose.
- iii. The Company reserves the right to trace the proceeds of sale received into any bank or other account which the Buyer maintains.
- iv. If the goods are sold the Company may by written demand require an assignment of the Buyer's right to recover the price from any third party.
- v. If the Buyer incorporates the goods into, or uses the goods for manufacture of other goods, before payment in full of the price, the Company shall be entitled to take possession of the new goods. The Company shall be entitled to sell the new goods (subject to any third party rights therein) and shall retain from the proceeds of sale the amount outstanding to the Company for the goods and pay any balance remaining to the Buyer.

(g) The Buyer shall permit the Company, its employees, agents and third parties authorised by the Company access to the Buyer's premises or other premises within the control of the Buyer at which the goods are stored or located for the purpose of the Company conducting its rights pursuant to condition 6(f) above.

#### 7. WARRANTY AND LIABILITY

(a) Subject to the conditions set out below, the Company warrants that the goods will be free from defects in material and workmanship for a period of 12 months from the date of delivery, unless otherwise stated, and shall repair or replace any goods which the Buyer proves to the satisfaction of the Company to be faulty in accordance with this Condition 6(a).

(b) The buyer must report any defects or equipment damage within 14 days of the delivery date.

(c) The warranty given in Condition 7(a) is subject to the following conditions:

- i. The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's (or third party manufacturer's) instructions, misuse or alteration or repair of the goods without the Company's written approval.
- ii. The Company shall be under no liability in respect of any defect arising as a result of the Company following any drawing, design or specification supplied by the Buyer or any customer or client of the Buyer;
- iii. The Company shall be under no liability if the goods differ from their description or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- iv. The Company shall be under no liability if the total price for the goods has not been paid by the due date for payment.
- v. The above warranty does not extend to parts, materials or equipment not manufactured/supplied by the Company, in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee provided by the manufacturer thereof to the Company.

(d) Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are expressly excluded to the extent permitted by law.

(e) The Company shall not be liable to the Buyer by reason of any representation, implied warranty, condition or other term or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever arising out of the supply of goods and the Company's liability for direct loss (other than for death or personal injury) shall be limited to the Company's invoice value of the goods.

(f) Nothing in these Conditions shall limit or exclude the Company's liability for:

- i. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- ii. fraud or fraudulent misrepresentation;
- iii. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- iv. defective products under the Consumer Protection Act 1987; or
- v. any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

#### 8. RETURNS/CANCELLATION

(a) The Company will not accept the return of any goods without its prior written consent.

(b) Where such consent is provided goods shall be returned at the Buyer's expense.

(c) Credit for goods returned (other than pursuant to a warranty claim) will be provided by the Company at the goods resale value, less a handling fee of 50% of the Company's invoice value of the goods, provided that the goods are returned in a condition suitable for resale (including any packaging in which the goods were originally supplied). A restocking fee of 5% may also be applied.

(d) Order cancellation may be accepted at no cost to the buyer if the order is still processing and no work has been carried out to fulfil the order.

(e) Orders that are cancelled may be charged at a rate dependent on the order status and will reflect any time or materials that have already been used, in addition to any restocking or administration fee, if appropriate.

(f) Installation work cancellations must be given with more than 24 hours' notice (working day). If work is cancelled with less than 24 hours' notice the following penalties will be apply:

- i. For a cancellation of 1 day then that full day will still be due.
- ii. For a cancellation of more than 1 day, 50% of the total man days and any additional fees or penalties incurred by SystemWare Europe.

#### 9. ALTERATIONS/MODIFICATIONS

The Company may make such alterations or modifications as it deems necessary to the goods or their manufacture without notice to the Buyer from time to time.

#### 10. NOTICES

All notices to be given under the Contract shall be given by prepaid first class post, facsimile or email to the registered office/email address or principal place of business of the party to be notified and shall be deemed to have been delivered if by letter at the expiration of 48 hours after posting and if by facsimile/email on receipt.

#### 11. TERMINATION

Without prejudice to any other remedies the Company may have against the Buyer. The Company may terminate the Contract immediately on notice to the Buyer, upon the Buyer becoming bankrupt or insolvent or upon a resolution to wind up the Buyer being passed or a receiver, administrative receiver or administrator being appointed (or any similar procedure being instigated in the jurisdiction in which the Buyer resides) and shall be entitled to take possession of all goods supplied and unpaid for, in accordance with condition 6 above.

#### 12. FORCE MAJEURE

The Company shall be entitled to cancel the Contract or reduce the quantity of goods to be provided if it is prevented from providing the goods through any circumstances beyond its reasonable control including (but not limited to) industrial action, war, fire or prohibition or enactment of any kind, and the Company will not be liable for any loss or damage incurred whatsoever arising from such cancellation or reduction.

#### 13. ASSIGNMENT AND SUBCONTRACTING

(a) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

#### 14. SEVERANCE

(a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.



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(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**15. WAIVER**

(a) A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**16. PURCHASING**

- (a) Goods purchased by SystemWare Europe must be accompanied by a Manufacturer's Certificate of Conformity verifying compliance with and all deviations from, the conditions of the purchase order.
- (b) The supplier must supply all information regarding export controls and classifications for the product ordered, in order to comply with UK and US export control regulations.
- (c) The Supplier shall fulfil at any time all requirements according to applicable national and European law, especially but not limited to Regulation No.1907/2006 ("REACH"). The Supplier shall especially fulfil all duties imposed upon him regarding the market access requirements and the marketability, including any necessary registration as well as compliance with all duties to inform with regard to delivered substances, preparations/mixtures and/or articles as well as their packaging.
- (d) Payments terms are to be adhered to and will be outlined in the Purchase Order.
- (e) Any damages incurred by circumstances through the fault of the supplier may be flowed down to the supplier.
- (f) Other terms and conditions specific to the Purchase Order may annotated on the Purchase Order.

**17. PRIVACY**

(a) Your privacy is important to us and as such a separate customer privacy policy is available on our website. You can also request a copy of this policy by contacting [enquiries@sysware-europe.com](mailto:enquiries@sysware-europe.com). We comply with all of the latest UK and EU regulations.

**18. THIRD PARTY RIGHTS**

(a) A person who is not a party to the Contract shall not have any rights under or in connection with it.

**19. GOVERNING LAW**

The contract shall be governed by English law and subject to the exclusive jurisdiction of the English courts.



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