

CONDITIONS OF SALE (issue 9)

1. Definitions

- 1.1. "Buyer" means the person who buys or agrees to buy the goods from the Seller.
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 "Delivery Date" means the date specified by the Seller when the goods are to be delivered.
- 1.4 "Goods" means the articles which the Buyer agrees to buy from the Seller
- 1.5 "Price" means the price for the goods excluding carriage, packing, insurance and VAT.
- 1.6 "Seller" means Actionpoint Group Ltd of Chestnut Court, Otterham Quay Lane, Rainham, Gillingham, Kent, ME8 8AS.

2. Conditions applicable

- 2.1 These conditions shall apply to all contracts for sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these conditions.
- 2.3 Confirmation of your order of Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3. The Price and payment

- 3.1 The Price shall be the Price set out in a written quotation provided to the Buyer. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 The Seller shall not be bound to deliver the Goods until the Buyer has paid for them. Payment shall be due before the delivery date and time for Payment shall be of the essence.
- 3.3 Interest on overdue invoices shall accrue from the date when Payment due from day to day until the date of Payment at the rate of 8% above Bank of England base rate from time to time in force and shall accrue at such a rate after as well as before any Judgment.
- 3.4 Additionally where the Late Payment of Commercial Debts (Interest) Act 1998 applies in the event of an overdue invoice the statutory charges referred to therein shall become due immediately that the invoice shall become due

4. The Goods

- 4.1 The quantity and descriptions of the Goods shall be set out in the Seller's quotation.
- 4.2 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
 - 4.2.1 Such discrepancy in quantity shall not exceed 15%
 - 4.2.2 The price shall be adjusted pro rata to the discrepancy
 - 4.2.3 The Seller shall bear no liability in this regard
- 4.3 Where the Buyer has made specifications in respect of the Goods the Seller will use its reasonable endeavours to supply the Goods in accordance with that specification however the Seller will have no liability to the Buyer in respect of the Goods failing to comply with such specification due to the standard manufacturing tolerances applied by the manufacturer of the Goods.
- 4.4 Where the Buyer has specified that the Goods shall comply with the Buyer's own specifications the Goods shall be marked in accordance with the Buyer's instructions save that the Seller shall not be required to print or handle any matters which in the Seller's sole discretion is of an illegal or obscene nature.
- 4.5 For the avoidance of doubt the Goods are sold in accordance with the description set out in the Seller's quotation and where the Seller has provided to the Buyer a sample of the Goods the Buyer accepts that the

sample was solely for information purposes and is in no way an express or implied condition or warranty as to the quality description colour fitness or merchantable quality of the Goods subsequently delivered.

5. Warranties and liability

All terms, conditions and warranties (whether implied or made expressly) whether by the Seller or its Servants or Agents or otherwise relating to the quality and/or fitness for purpose of the Goods or any of the Goods are excluded.

6. Delivery of the Goods

6.1 Delivery of the Goods shall be made to the Buyer's address on or before the delivery date. Where the Buyer has failed to provide to the Seller a delivery date the Buyer shall be bound to accept the Goods when they are ready for delivery from the Seller. The Buyer shall make all arrangement necessary to take the delivery of the Goods whenever they are tendered for delivery.

6.2 The Seller shall not be liable for any loss or damage whatever due to the failure by the Seller to deliver the Goods (or any part of them) promptly or at all.

6.3 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full providing that the delivery shall be tendered at any time within 2 months of the delivery date.

6.4 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Terms and Conditions.

7. Acceptance of the Goods

7.1 The Buyer shall be deemed to have accepted the Goods upon delivery to the Buyer

7.2 After acceptance the Buyer shall not be entitled to reject the Goods which are not in accordance with the contract.

7.3 If the Buyer promptly rejects any of the Goods which are not in accordance with the contract the Buyer within 14 days shall return the rejected Goods to the Seller and the Seller may decide in its absolute discretion whether to replace the Goods or credit the Buyer with the cost of the purchase from the Seller.

8. Passing of property and risk

8.1 The Goods shall be at the Buyer's risk as from delivery or collection

8.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:

8.2.1 The Buyer shall have paid the price plus VAT in full and

8.2.2 No other sums whatever shall be due from the Buyer to the Seller

8.3 Until property in the Goods passes to the Buyer in accordance with clause 8.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

8.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as a principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

8.5 The Seller shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the Goods is not passed from the Seller.

8.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or re-sold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under Clause 8.4 shall

cease. It will be assumed that where the Buyer purchases similar Goods from the Seller on a regular basis that a stock rotation system has operated and Goods still held relate to Invoices still outstanding for which Payment has not been made.

8.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods while the property of the Seller.

Without prejudice to the other rights of the Seller if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

8.8 The Buyer shall insure and keep insured the Goods to the full price against "all risks" to the reasonable satisfaction of the Seller until the date the property in the Goods passes from the Seller.

8.8.1 The Buyer shall produce to the Seller upon request written evidence of, and if requested a copy of, such as insurance as is required by virtue of paragraph 8.8 above.

9. Remedies of Buyer

9.1 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. In no circumstances shall the liability of the Seller exceed the price of the Goods.

9.2 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.

10. Copyright

10.1 The specifications and designs of the Goods (including the copyright, design right or other intellectual property in them) shall not pass to the Buyer. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third parties.

10.2 Where any specifications and designs of the Goods or any of the Goods have been provided by the Buyer the copyright, design right or other intellectual property in them shall remain the property of the Buyer.

11. Miscellaneous

11.1 Where the Seller provides to the Buyer in respect of the Goods stipulations laid down by the manufacturer of the Goods then the Goods are sold subject to those stipulations and the Buyer will comply with the same.

11.2 Any written recommendations made by the Seller as to the use to which any goods sold to the Buyer may be put and should the Buyer ignore the same, the Seller shall have no responsibility whatsoever in respect of such damage, liability or costs so caused.

11.3 Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

12. Property law of contract

These Terms and Conditions are subject to the law of England and Wales.