

CONDITIONS OF SALE (issue 10)

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, to the extent applicable, the Special Conditions.
- 1.3 "Contract" means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.4 "Control" means as set out in section 1124 of the Corporation Tax Act 2010.
- 1.5 "Delivery Date" means the date specified by the Seller when the goods are to be delivered.
- 1.6 "Delivery Location" means the Buyer's premises or such other location as the Buyer specifies in their order and which has been accepted by the Seller in its written acceptance of the Buyer's order.
- 1.7 "Expenses" means any out-of-pocket costs incurred by the Seller in fulfilling an order, including (without limitation):
- a) postage, packaging, carriage, freight, and handling charges;
 - b) insurance;
 - c) currency conversion and banking charges applicable to the payment method used;
 - d) value added tax or any other applicable sales tax in the UK; and
 - e) any customs, import or other duties charged in respect of the sale and importation of Goods into the country in which the Buyer is resident or the Delivery Location.
- 1.8 "Goods" means the goods (or any part of them) which the Buyer agrees to buy from the Seller.
- 1.9 "Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.
- 1.10 "Price" means the price for the goods excluding Expenses.
- 1.11 "Seller" means Actionpoint Group Ltd, a company registered in England and Wales with company number 12514599 whose registered office is at Suite 1, The Old Rides Farm, Leysdown Road, Sheerness, ME12 4BD.
- 1.12 "Special Conditions" means the Special Conditions of Sale set out at the end of these Conditions which apply only to the extent the Seller has issued a Product Specification Sheet (as defined in the Special Conditions) to the Buyer and only to the relevant Goods to which the Product Specification Sheet relates.

2. Basis of Contract

- 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. The Buyer is responsible for ensuring that the terms of its order and any applicable specification are complete and accurate.
- 2.3 An order shall only be deemed to be accepted when the Seller issues a written acceptance of the order, at which point the Contract shall come into existence.

2.4 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 14 days from the date of issue unless otherwise stated.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

3. The Price and payment

3.1 The Price shall be the Price set out in a written quotation provided or as otherwise communicated to the Buyer, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date the Seller issues written acceptance of the Buyer's order in accordance with clause 2.3. The Price is exclusive of Expenses.

3.2 The Seller may increase the price of the Goods at any time to reflect any increase in the cost of the Goods that is due to:

3.2.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

3.2.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the specification of them; or

3.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

3.3 The Buyer shall pay the Price at the time of making its order in full and in cleared funds unless otherwise agreed by the Seller in writing. Time for payment is of the essence and the Seller shall not be bound to deliver the Goods until the Buyer has paid for them.

3.4 Where the Late Payment of Commercial Debts (Interest) Act 1998 applies in the event of an overdue payment the statutory charges referred to therein shall accrue from the date that the relevant payment became due.

3.5 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

4. The Goods

4.1 The Goods are sold in accordance with the quantity and descriptions set out in the Seller's written acceptance of the Buyer's order. The Seller reserves the right to change the specification of the Goods if it is required to do so by law.

4.2 The Buyer shall store, commission, install, use and maintain the Goods strictly in accordance with the manufacturer's instructions and guidance or as otherwise directed by the Seller.

4.3 The Seller warrants that on delivery, the Goods shall:

4.3.1 conform in all material respects with their description; and

4.3.2 shall be free from material defects in design, material and workmanship.

4.4 Except as set out in clause 4.3 or, to the extent that they are applicable in the Special Conditions:

4.4.1 the Seller gives no warranties and makes no representations in relation to the Goods, and

4.4.2 the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this Contract.

4.5 Where the Buyer has submitted specifications in respect of the Goods the Buyer acknowledges and accepts that:

4.5.1 the Buyer is solely responsible for ensuring that any such specification is complete and accurate; and

4.5.2 the Seller shall have no liability to the Buyer arising under or in connection with any specification supplied by the Buyer which is not complete and accurate.

4.6 The Seller will use its reasonable endeavours to supply the Goods in accordance with any specifications submitted by the Buyer, however the Seller will have no liability to the Buyer in respect of the Goods failing to comply with such specifications due to the standard manufacturing tolerances applied by the manufacturer of the Goods. The Seller shall provide details of the relevant standard manufacturing tolerances upon request.

4.7 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.

4.8 The Buyer shall indemnify the Seller 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 reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of in connection with the Seller's use of the Buyer's specification. This clause 4.8 of shall survive termination of the Contract.

4.9 For the avoidance of any doubt, the Seller provides no representation or warranty that the Goods will not adversely react with a surface that the Goods are applied to nor that the Goods will perform in any way other than set out in clause 4.3. The Buyer undertakes always to test the Goods on an inconspicuous area prior to use and the Seller shall have no liability to the Buyer howsoever arising as a result of the Buyer's breach of this obligation.

4.10 The performance of the Goods may be impacted upon by many variable factors, including but not limited to their use or the nature of their application, the atmospheric conditions within which they have been stored or used, and the type and nature of the surface the Goods are applied to. The Seller gives no warranty or guarantee that: (a) the Goods shall be fit for any intended purpose, whether specifically communicated by the Buyer to the Seller or otherwise; or (b) that the Goods will not adversely react with a surface to which they are applied as a result of the factors described in this clause 4.10. Without prejudice to clause 4.9, the Seller strongly recommends that the Buyer conducts an evaluation trial of the Goods to confirm the suitability of the Goods to the Buyer's intended application or use of them.

4.11 Any confirmation given by the Seller that the Goods are suitable for use on a particular surface is an estimate only and should not be relied upon by the Buyer. It is the Buyer's sole responsibility to test the Goods on an inconspicuous area prior to full use or deployment to ensure that the Goods do not react adversely with the surface to which they are to be applied. The Seller shall have no liability whatsoever arising as a result of the Buyer's failure to comply with this clause 4.11.

5. Delivery of the Goods

5.1 Delivery of the Goods shall be made to the Delivery Location 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 arrangements necessary to take the delivery of the Goods whenever they are tendered for delivery.

5.2 Any dates quoted for delivery are approximate only and time of delivery is not of the essence. Delays in the delivery of Goods shall not entitle the Buyer to:

5.2.1 refuse to take delivery of the Goods;

5.2.2 claim damages; or

5.2.3 terminate the Contract without the Seller's agreement.

5.3 To the extent that the Seller incurs Expenses in arranging delivery of the Goods, the Buyer shall be liable to pay for all such Expenses incurred by the Seller in complying with the Buyer's delivery instructions. The Seller may invoice the Buyer for such Expenses at any time and the Buyer shall pay any such invoice within 14 days of the date of the invoice.

5.4 The Seller shall have no liability for any failure or delay in delivering Goods to the extent that any failure or delay is caused by the Buyer's failure to comply with its obligations under this Contract.

5.5 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 3 months of the original delivery date.

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

5.7 The Buyer acknowledges that due to the standard manufacturing tolerances applied by the manufacturer of the Goods, the Seller may deliver Goods in quantities more or less than those ordered by the Buyer. The Seller shall provide details of the relevant standard manufacturing tolerances upon request. The parties agree that if the Seller delivers:

5.7.1 less; or

5.7.2 up to and including 15% more,

than the quantity of Goods ordered by the Buyer, the Buyer shall not be entitled to reject the Goods, but a pro rata adjustment will be made to the Price.

5.8 This clause 5.8 applies where the Delivery Location is outside of the United Kingdom:

5.8.1 The Buyer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Seller, the Buyer shall make those licences and consents available to the Seller prior to the relevant shipment.

5.8.2 Either before or at the point of despatch, the Seller shall provide the Buyer with details of despatch. Once the Buyer has been notified of the despatch details, the Buyer shall assume all responsibility for liaising with any import or forwarding agents or transporters, save to the extent that the Seller has agreed to assist at the Buyer's request and cost.

5.8.3 The Buyer shall be liable for any costs associated with a delay to delivery resulting from its failure to comply with clause 5.8.2.

6. Acceptance of the Goods

6.1 The Buyer may reject any Goods delivered to it that do not comply with clauses 4.3 provided that:

6.1.1 notice of rejection is given to the Seller:

6.1.1.1 in the case of a defect apparent on a normal visual inspection, within two days of delivery;

6.1.1.2 in the case of a latent defect, within seven days of the latent defect having become apparent; and

6.1.2 none of the events listed in clause 6.3 apply.

6.2 If the Buyer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted the Goods and it shall not be entitled to reject the Goods.

6.3 The Seller shall not be liable for Goods' failure to comply with clauses 4.3 in any of the following events:

6.3.1 the Buyer makes any further use of those Goods after giving notice in accordance with clause 6.1;

6.3.2 the defect arises because the Buyer failed to comply with clause 4.2 or (if no such instructions provided) good trade practice regarding the same;

6.3.3 the Buyer alters or repairs those Goods without the written consent of the Seller;

6.3.4 the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;

6.3.5 the defect arises as a result of accidental damage caused other than by the Seller, fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

6.3.6 the Goods differ from their description as a result of:

6.3.6.1 their manufacture within the standard manufacturing tolerances applied by the manufacturer of the Goods; or

6.3.6.2 changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 If the Buyer rejects Goods in accordance with this clause 6, 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.

7. Passing of title and risk

7.1 The Goods shall be at the Buyer's risk once they have been delivered to the carrier appointed to deliver the Goods to the Delivery Location.

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

7.2.1 The Buyer shall have paid the Price plus VAT in full; and

7.2.2 No other sums whatsoever shall be due from the Buyer to the Seller.

7.3 Until title in the Goods passes to the Buyer in accordance with clause 7.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall:

7.3.1 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;

7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

7.4 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. In the case of a resale of the Goods, title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs. 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, not as the Seller's agent.

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

7.6 Until such time as title 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 7.4 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 orders still outstanding for which Payment has not been made.

7.7 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.

7.8 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 title in the Goods passes from the Seller.

7.9 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 clause 7.8 above.

8. Limitation of liability

8.1 Nothing in this Contract shall limit or exclude the Seller's liability for:

8.1.1 death or personal injury caused by its negligence;

8.1.2 fraud or fraudulent misrepresentation; or

8.1.3 any other matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

8.2 Subject to clause 8.1:

8.2.1 the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

8.2.1.1 loss of profit;

8.2.1.2 loss of goodwill;

8.2.1.3 loss of business;

8.2.1.4 loss of business opportunity; or

8.2.1.5 indirect or consequential loss,

suffered by the Buyer arising under or in connection with this Contract; and

8.2.2 in no circumstances shall the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, exceed 100% of the Price of the Goods in relation to which liability arises, as set out in the Buyer's order.

8.3 In the event of any breach of this Contract by the Seller, the Buyer's remedies shall be limited to damages.

9. Intellectual Property Rights

9.1 The Intellectual Property Rights in specifications and designs of the Goods shall remain the property of the Seller and the Buyer shall acquire no rights in them.

10. Termination

10.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

10.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;

10.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

10.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

10.1.4 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

10.1.5 there is a change of Control of the Buyer; or

10.1.6 the Buyer obtains, or takes steps to obtain, Control of any third party who the Seller, in its absolute discretion, considers is a competitor of the Seller.

10.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 10.1.1 to clause 10.1.6, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

10.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller any unpaid sums due to the Seller and interest.

10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. General

11.1 Entire agreement:

11.1.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.1.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

11.2 Confidentiality:

11.2.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, or the existence and terms of this agreement including the Price of Goods, except as permitted by Clause 11.2.2.

11.2.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 11.2; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

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 the affected party. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

11.4 Any variation to these Conditions (including, to the extent that they are applicable, the Special Conditions) shall be inapplicable unless agreed in writing by the Seller.

11.5 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.7 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

11.8 No one other than a party to this Contract shall have any right to enforce any of its terms.

11.9 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

SPECIAL CONDITIONS OF SALE

1. Application

1.1 These Special Conditions of Sale (the "Special Conditions") supplement the Conditions and apply only to the extent that the Seller has issued a Product Specification Sheet (as defined below) in respect of the relevant Goods to the Buyer. These Special Conditions shall not apply to any Goods in respect of which no Product Specification Sheet has been issued. In the event of any conflict between these Special Conditions and the Conditions, then these Special Conditions shall take precedence. These Special Conditions together with the Conditions and the applicable order documentation shall together form a contract between the Seller and the Buyer.

2. Definitions

2.1 In these Special Conditions, defined terms have the meaning given in the Conditions save as set out below:

"Product Specification Sheet" means the Seller's product documentation setting out the technical specification of the Goods.

3. The Goods

3.1 Notwithstanding clause 4.1 of the Conditions, the Goods are sold in also accordance with the relevant Product Specification Sheet.

3.2 The Seller reserves the right to change the applicable Product Specification Sheet if it is required to do so by law.

3.3 In addition to clause 4.2 of the Conditions, the Buyer shall also strictly adhere to all instructions set out in the relevant Product Specification Sheet including, to the extent described, with regards to the storage, commission, installation, use and maintenance the Goods.

4. Warranty

4.1 In addition to the warranties set out in clause 4.3 of the Conditions, the Seller further warrants that on delivery, the Goods shall conform in all material respects with the relevant Product Specification Sheet and any additional specification agreed by the parties.

5. Acceptance of the Goods

5.1 The Buyer may reject any Goods delivered to it that do not comply with clause 4 of these Special Conditions provided that the Buyer has complied with clause 6.1 of the Conditions. To the extent the Buyer rejects Goods under this clause, the Seller may replace the Goods or credit the Buyer with the cost of the purchase of such Goods in accordance with clause 6.4 of the Conditions.

5.2 Without prejudice to clause 6.3 of the Conditions, the Seller shall not be liable for Goods' failure to comply with clause 4 of these Special Conditions where:

5.2.1 the defect arises because the Buyer failed to comply with clause 3.3 of these Special Conditions;

5.2.2 the Goods differ from the Buyer's specification as a result of:

5.2.2.1 their manufacture within the standard manufacturing tolerances applied by the manufacturer of the Goods; or

5.2.2.2 changes made to ensure they comply with applicable statutory or regulatory requirements.

6. Intellectual Property Rights

Where any specifications and designs of the Goods or any of the Goods have been provided by the Buyer the Intellectual Property Rights in them shall remain the property of the Buyer.