

# Cyanotec Limited Terms of Trade

## 1. INTERPRETATION

### 1.1 In these Conditions:

**'Buyer'** - the persons who accept a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.

**'Company'** - CYANOTEC Limited (Company number 4558739) registered in England whose registered office is situated at The Old Doctors House, 74 Grange Road, Dudley, West Midlands, DY1 2AW.

**'Conditions'** - the standard terms and conditions of sale set out here and (unless the context otherwise requires) including any special terms and conditions agreed in accordance with Condition 2.2.

**'Contract'** - the contract for the purchase and sale of the Goods.

**'Delivery Address'** - the address for delivery stated on any order or such other address as may be agreed in writing between the parties.

**'Goods'** - the goods (including any instalment of such goods or any parts for them) which the Company is to supply in accordance with these Conditions as set out in the Order.

**'Order'** - the pro forma order printed overleaf in respect of the Goods or an Order in any other format approved by the Company in Writing.

**'Quotation'** - Any document in which the Company sets out its proposals to sell its Goods at the prices set out in the document. For the avoidance of doubt the Quotation shall be treated only as an invitation to treat and not an offer to supply the Goods on the terms set out therein.

**'Writing'** - includes e-mail, website order form, facsimile transmission, and other comparable means of communication.

## 2. BASIS OF THE SALE

(a) Order acceptance and the completion of the contract between the Company and the Buyer will take place on the dispatch of the Goods ordered, unless we have notified the Buyer that we do not accept the order, or the Buyer has cancelled it in accordance with clause 11.

(b) Non-acceptance of an order may be a result of one of the following:

- The product the Buyer ordered being unavailable from stock.
- Our inability to obtain authorisation for the Buyer's payment.

- The identification of a pricing or product description error.

(c) No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company.

(d) The Company shall supply the Goods to the Buyer subject to these terms to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order confirmation or order or similar document.

### 3. QUOTATIONS

Save as otherwise specifically provided, Quotations are valid for a period of not more than 30 days from their date unless otherwise stated. Quotations include only the Goods specified therein and are subject to availability of Goods at the date the Buyer's acceptance is notified to the Company. The Company reserves the right to increase the prices set out in a Quotation inline with any supplier increases.

### 4. PERFORMANCE, SUITABILITY, ETC.

(a) While the Company will do its best to comply with any requirements notified by the Buyer, the responsibility for ensuring that the Goods are fit for the Buyer's purpose, meet the Buyer's requirements and are in accordance with any description or specification put forward by the Buyer, is the Buyer's.

(b) No warranty, condition, description or representation given or made before the Company's acceptance of an order or the Buyer's acceptance of a quotation is to be treated as a term of the Contract or as inducing it unless expressly incorporated in the Contract.

(c) The Company reserves the right to make changes in the design or specification of the Goods without notice in the light of changes in technical knowledge, production techniques, Government, EEC or other regulations, considerations of safety or other reasonable cause.

### 5. PRICES

(a) All prices are subject to the Company's standard delivery charges details of which are available upon request.

(b) All prices are subject to alteration without notice and Goods will be invoiced at the prices ruling at the date of despatch.

(c) Value added tax is payable on all invoiced prices (where applicable) at the appropriate rate.

## 6. PAYMENT

- (a) The Company shall be entitled to invoice the Buyer paying by account for the price of Goods on or at any time after delivery.
- (c) Unless otherwise expressly provided, payment is due without set off, deduction or counterclaim not later than thirty days EOM from the invoice date.
- (d) Accounts unpaid at the due date carry interest (before as well as after any judgement or insolvency) at the applicable rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 together with all debt recovery costs incurred by the Company in bringing legal action to enforce the unpaid account.
- (e) The Company reserves the right to demand at any time from the Buyer payment in advance before undertaking any work or before delivery of the Goods.
- (f) Should the Buyer fail to discharge any invoice within 30 days EOM of its date the Company shall be entitled to suspend all further deliveries until the Buyers account with the Company is paid in full (together with any accrued interest and debt recovery costs as provided for above).

## 7. DELIVERY

- (a) Subject to the information detailed in the 'Order, delivery of the Goods shall be made by the Company by delivering the Goods to the Delivery Address.
- (b) The Company will use all reasonable endeavours to meet quoted delivery dates, but such dates are estimated only and the Company shall not be liable for the consequences of any delay.
- (c) The Company shall in any event be entitled to extend the delivery period where delay is caused by factors outside the Company's reasonable control.
- (d) Where the Buyer fails or refuses to accept delivery of the Goods they will be stored at the Buyer's risk and expense and attract storage costs at the Company's prevailing rate. Default by the Buyer for more than two weeks entitles the Company to suspend or terminate the Contract so far as it remains unperformed and to recover damages for breach. The Buyer shall also be responsible for all costs associated with the re-delivery of the Goods.
- (e) The Company shall be entitled to deliver Goods comprised in one order in several consignments in which event each such consignment shall be treated as the subject of a separate contract.
- (f) The Goods shall be packed in sufficient packaging to achieve the objective of safely transporting the Goods to the Buyer under normal conditions. Where the Buyer has any specific requirements for the packaging of the Goods, it shall be liable for all additional costs associated with compliance with its specific requirements. The Seller shall not be liable for any losses arising caused by any failure in the packaging specified by the Buyer.

## 8. CARRIAGE AND DAMAGE IN TRANSIT

(a) Where carriage is arranged by the Company claims for loss, shortages or damage in transit will not be accepted unless the Company is notified in Writing within 5 working days of the arrival of the Goods; in the case of non-delivery, claims will not be accepted unless received in Writing by the Company within 24 hours from the estimated delivery date notified to the Buyer.

(b) Any Goods signed for will be deemed as lost/damaged and no claims will be entertained.

(c) In all other circumstances, carriage from the Company's premises shall be arranged by and be entirely at the risk of the Buyer.

(d) the Buyer shall be responsible for insuring the Goods to the full invoice value (including VAT) until such time as the Goods have been paid for in full.

## 9. RESERVATION OF TITLE

(a) The risk of any damages to the Goods while in the Buyer's possession shall be borne by the Buyer but the legal title to the Goods shall remain with the Company until such time as the Company has received payment of the purchase price of the Goods and of any other goods or services previously or subsequently supplied by the Company to the Buyer whereupon title shall pass to the Buyer.

(b) Insofar as the Buyer shall until such time hold the Goods as the fiduciary agent of the Company and shall accordingly remain liable to account to the Company for the Goods or, if the same shall be sold by the Buyer, (which the Buyer shall be entitled to do as the fiduciary agent of the Company but, as between the Buyer and the Buyer's customer, only as principal and without creating any relationship, disclosed or undisclosed, between the Company and such customer, for all of the proceeds, tangible and intangible (and including without limitation insurance proceeds and proceeds of proceeds), thereof.

(c) The Buyer shall, as trustee for the Company, pay such proceeds into a bank account separate from all other bank accounts and other monies and assets of the Buyer and of third parties. The Buyer shall store the Goods separate from any other goods of the Buyer and of third parties and shall identify the Goods as the property of the Company. The Buyer shall not remove any identifying marks placed on the Goods by the Company.

(d) While any Goods still in the ownership of the Company remain upon the Buyer's premises or the premises of any agent or associate of the Buyer, the Company shall have the right to enter upon the premises on which the Goods are located for the purpose of inspecting the condition and storage arrangements of the Goods.

(e) The Buyer may exercise its right to sell the Goods as the fiduciary agent of the Company in the usual course of the Buyer's business but such right:

(i) may be revoked at any time by the Company giving notice to that effect if the Buyer is in default for longer than seven days in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or of any other goods or services supplied at any time by the Company to the Buyer or for any reason whatsoever or if the Company has bona fide doubts as to the solvency of the Buyer; and

(ii) shall automatically cease if a receiver, manager or administrator is appointed over the assets undertaking or property of the Buyer, or a winding up or administration order against the Buyer is made or petitioned, or any petition or order in bankruptcy against the Buyer is presented or made, or the Buyer goes into voluntary liquidation (otherwise than for the purposes of reconstruction or amalgamation while solvent) or calls a meeting of or makes arrangements or compositions with creditors.

(f) Upon determination of the Buyer's rights of sale under paragraph (e) (i) or (ii) above, the Buyer shall place the Goods at the disposal of the Company (who shall be entitled to enter any premises of the Buyer for the purpose of removing the Goods and to remove the Goods from the said premises) and/or as the case may be pay to the Company the proceeds then held by the Buyer as trustees for the Company in accordance with this clause.

## 10. WARRANTIES AND LIABILITY

(a) Subject to the conditions set out below the Company warrants that Goods will correspond with their specification at the time of delivery.

(b) The above warranty is given by the Company subject to the following conditions:

(i) the Company shall be under no liability in respect of any defect in the Goods arising from any drawings, designs or specification supplied by the Buyer.

(ii) 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, its suppliers and/or the Manufacturer's instructions, misuse or of the Goods without the Company's approval.

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

(d) Any claim by the Buyer which is based on any defect in the quality or condition of Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified in Writing to the Company within 5 working days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure, if delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defects or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with these Conditions.

(e) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specifications is notified to the Company in accordance with these Conditions, the Company shall replace the Goods free of charge. The Company reserves the right to carry out reasonable tests on the Goods to establish the validity of any claims.

(f) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, or any warranty, condition or other term (express or otherwise), or duty at common-law, or under the express terms of the Contract with the Buyer, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

## 11. CANCELLATION AND RETURNS

(a) The Company will not accept the cancellation of any Orders. The Buyer will remain liable for the payment of the price set out in the Order.

(b) In the event that the Goods can be resold by the Company AND that the Goods are returned to the Company in re-saleable condition, a charge of 20% of the original invoice value and all delivery costs will be levied.

## 12. BUYER'S INSOLVENCY

If before the Buyer makes payment in full the Buyer becomes insolvent or enters into a scheme of arrangement or composition with creditors or goes into liquidation or has a receiver or administrator appointed, the Company shall be entitled to exercise all or any of the following rights: namely, to retain all monies paid by the Buyer, to stop Goods in transit, to remove the Goods and/or all other goods supplied by the Company to the Buyer which have not been paid for from the Buyer's premises, to exercise a lien over goods, to resell them and to claim from the Buyer any further loss arising in any manner whatsoever and to be indemnified by the Buyer, and to elect to treat the Contract as repudiated or as continuing, provided that the Company will not retain money already paid or arising on a resale in excess of the full loss or damage suffered by the Company, but if the net proceeds of sale plus retained money do not satisfy the Company's full loss, the Company shall be entitled to claim from the Buyer such sums as will satisfy the full loss together with costs and expenses reasonably incurred.

## 13. HEALTH AND SAFETY

All Goods supplied by the Company should be installed, used, cleaned, maintained or alike in accordance with the relevant information or advice relating to such matters made available by the manufacturer, designer, importer, supplier, and the Company.

## 14. FORCE MAJEURE

In addition to the right to extend the delivery period referred to in paragraph 7 above, the Company shall be entitled to suspend or postpone performance of the Contract in the event of strike, lock-out, dispute, breakdown, accident, force majeure or any other circumstances beyond the reasonable control of the Company in the event of such suspension or postponement beyond the period of 3 months, the Contract shall (with the consent of the Buyer and the Company, such consent not to be unreasonably withheld by either of them so far as it remains unperformed be deemed to be terminated but without prejudice to the rights of either party arising before the date of termination.

## 15. WAIVER

No waiver or breach of these conditions shall prejudice the Company's rights in respect of any subsequent breach.

## 16. SEVERANCE

If any provision of these Conditions, 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.

## 17. APPLICABLE LAW AND JURISDICTION

The Contract shall be deemed to have been made in England, the law applicable to it is the Law of England and the parties agree to submit to the non-exclusive jurisdiction of the English courts.