

TERMS & CONDITIONS

1 DEFINITIONS

In these conditions:-

“the Company” means Ever Case Technology (UK) Ltd
“the Contract” means the contract between the Company and the Customer formed in accordance with the provisions of Clause 2.
“the Customer” means the Company’s immediate customer for products.
“the Products” are all and any products and / or materials the subject of any Contracts to which these conditions apply.
“in writing” means a legible document delivered by post, telex or facsimile.

2 FORMATION OF THE CONTRACT

- 2.1 No contract shall be concluded until The Company sends a notice of acceptance in writing confirming the products availability schedule delivery dates, and price. This shall constitute acceptance of the Customer’s order.
- 2.2 If there is any variation between the Company’s notice of acceptance and the Customer’s purchase order, the Customer shall be deemed to have accepted the Company’s variations on delivery of the Products unless it rejects the Products or unless it responds within ten days, whichever is the earlier.
- 2.3 Any quotation shall specify the Products to be supplied and when issued by The Company shall be construed as an invitation to treat.
- 2.4 Any variation to any term of the Contract or these terms and conditions must be in writing signed by both parties and expressed to be such a variation. Any standard terms of purchase of the Customer are hereby excluded.

3 PRICE

- 3.1 The price for the Products shall be as specified in the notice of acceptance.
- 3.2 The price for the Products shall be exclusive of:
 - 3.2.1 VAT and similar taxes and charges.
 - 3.2.2 Any export or import duties required to be paid on exporting The Products from the UK to any other country.
 - 3.2.3 Delivery and all other charges.
- 3.3 The Customer shall pay the price of the Products and all other charges (less any discount to which the Customer is entitled, but without any other deduction) within thirty days of the date of the Company’s invoice, notwithstanding that delivery may not have taken place and the property in the goods has not passed to the Buyer.
- 3.4 The time of payment of the price shall be of the essence of the Contract.
- 3.5 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - 3.5.1 Cancel the contract or suspend any further deliveries to the Customer; and
 - 3.5.2 Appropriate any payment made by the Customer to such of the Products, (or the Products supplied under any other Contract between the Company and the Customer) as the Company may think fit (notwithstanding any appropriation by the Customer); and
 - 3.5.3 Charge the Customer interest(both before and after the judgement) on the amount unpaid, at the rate of 15% per annum above Barclays Bank base rate from time to time, until payment in full is made.

4 DELIVERY

- 4.1 Delivery of the Product shall be made by the Customer collecting the Product at the Company’s premises at any time after the Company has notified the Customer that the Product is ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Products to that place.
- 4.2 Any dates quoted for delivery of the goods are approximate only and the Company shall not be liable for any delay in delivery of the Product howsoever caused. Time for delivery shall not be of the essence. The Product may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 4.3 If the Company fails to deliver the Product for any reason other than any cause beyond the Company’s reasonable control or the Customer’s fault, and the Company is accordingly liable to the Customer, the Company’s liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Products.
- 4.4 If the Customer fails to take delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer’s reasonable control or by reason of the Company’s fault) then, without prejudice to any other right or remedy available to the Company, the Company may,
 - 4.4.1 store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and any further costs of delivery; or
 - 4.4.2 sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 4.5 Non delivery must be reported to both the Company and when applicable, the carrier, within fourteen days of the date of invoice or the agreed date of delivery whichever is the earlier.
 - 4.5.1 If the Customer fails to give notice or report in accordance with this clause, the Products of quality and quantity specified in the agreement shall be deemed to have been delivered to the Customer who shall be bound to pay for, and shall lose any right to make a claim in respect of the same.

5 RETENTION OF TITLE AND RISK

- 5.1 The goods remain the Company’s property until the Customer has paid in full
 - 5.1.1 All sums due to the Seller under this Contract; and
 - 5.1.2 any other sums due from the Buyer to the Seller
- 5.2 Notwithstanding 5.1 above as soon as the goods are delivered to the Customer in accordance with this Contract they are at the Customer’s risk.
- 5.3 So long as the Products remain the Company’s property in accordance with clause 5.1 the Customer will;
 - 5.3.1 insure them against loss or damage under a policy which protects the Company’s interest in the goods;
 - 5.3.2 store them separately from other, similar goods owned by any other person so that they remain identifiable as the Company’s property;
 - 5.3.3 allow the authorised representative of the Seller to have access at any reasonable time to the premises where the goods are stored to;
 - 5.3.3.1 inspect the goods; or

5.3.3.2 reclaim possession of the goods; whether or not the goods have been incorporated into other goods in accordance with clause 5.4 herein.

- 5.4 The Customer is licensed to incorporate the Products in or use the Products as material for other goods or products (“the New Products”). Where the Products are not capable of physical removal from the New Products then the New Products shall be and are deemed to be owned legally and beneficially by the Company in common with;

5.4.1 the customer; or

5.4.2 any other owner of the New Products

and the Company shall be entitled to require the New Products to be sold in order to recoup the price. The Company’s rights shall be limited to the proportion necessary to recoup the money owed to it in respect of the price.

6 WARRANTIES AND LIABILITIES

- 6.1 The Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 6.2 The above warranty is given by the Company subject to the following conditions:
 - 6.2.1 the Company shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Customer;
 - 6.2.2 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 instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company’s approval;
 - 6.2.3 The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if and for so long as the total price for the Products has not been paid;
 - 6.2.4 In the event of a claim being made by the Customer pursuant to clause 6.1 then the liability of the Company shall be limited to any amount recovered by the Company from the manufacturer. The Company undertakes to use all reasonable diligence in pursuing a claim under the manufacturer’s warranty.
 - 6.2.5 The Company reserves the right to charge a fee pursuant to the Company’s standard returns procedure (which shall be published from time to time and available upon request) where goods are returned by the Customer pursuant to clause 6.1 and the manufacturer or the Company determines that there is not valid claim under the manufacturer’s warranty.
- 6.3 Subject as expressly provided in these conditions, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 6.4 Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Customer are not affected by these conditions.
- 6.5 Any claim by the Customer which is based on the Products’ failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company:
 - 6.5.1 within seven days from the date of delivery; or
 - 6.5.2 (where the defect or failure was not apparent on reasonable inspection) within 7 days of the date when the Products are first brought into use; or
 - 6.5.3 within 3 months of delivery; whichever shall be the earlier.If delivery is not refused, and the Customer does not notify the Company in accordance with the provisions of this sub-clause, the Customer shall not be entitled to reject the Products and the Company shall have no liability for such defects or failure, and the Customer shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.
- 6.6 Where any valid claim in respect of any of the Products which is based on the Products’ failure to meet specification is notified to the Company in accordance with these conditions, the Company shall be entitled to procure that the Products (or the part in question) are replaced or repaired free of charge or, at the Company’s sole discretion, refund to the Customer the price of the Products (or proportionate part of the price), but the Company shall have no further liability to the Customer.
- 6.7 Except in respect of death or personal injury caused by the Company’s negligence, the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under the express terms of the Contract, for any consequential loss or damage (whether for less of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company (it’s employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Customer except as expressly provided in these conditions.
- 6.8 Products returned in accordance with this clause shall be returned at the Customer’s expense and shall remain at the risk of the Customer.
- 6.9 Products returned in accordance with this clause shall be delivered in tact and in the original packaging together with all documentation and parts.

7 FORCE MAJEURE

The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company’s obligations in relation to the Products, if the delay or failure was due to any cause beyond the Company’s reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company’s reasonable control.

- 7.1 Acts of God, explosion, flood, tempest, fire or accident;
- 7.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 7.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 7.4 Import or export regulations or embargoes;
- 7.5 Strikes, lock-outs or other industrial actions or trade disputes, (whether involving employees of the Company or of a third party);
- 7.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 7.7 Power failures or breakdown in machinery;

8 GOVERNING LAW

The interpretation and application of the agreement shall be in accordance with English Law and both parties hereby agree to submit to the non-exclusive jurisdiction of the English Court.