

CENTRESOFT LIMITED – TERMS AND CONDITIONS OF SALE

1 INTERPRETATION

1.1 In these Conditions

“Buyer” means the person who purchases the Products from the Company

“Company” means Centresoft Limited

“Conditions” means these standard terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company

“Contract” means the contract for the purchase and sale of the Products incorporating these Conditions

“Order Acknowledgement” means the acknowledgement in writing by the Company that it has received the Buyer’s order to purchase the Products in accordance with the Company’s quotation

“Owner” means either the Company or the Publisher of the relevant Products (as the case may be)

“Products” means the Products (including any instalment of the Products) which the Company is to supply in accordance with these Conditions

“Publisher” means the publisher of the Products

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 References to the masculine include the feminine and vice versa.

2 GENERAL

2.1 Unless otherwise expressly agreed in writing by a Director of the Company, the Products are sold upon these Conditions, which govern the Contract and no representative of the Company has any authority to vary or omit these Conditions or any of them. Any terms and conditions printed on the Buyer’s order forms or in correspondence or elsewhere or implied by trade, custom, practice or course of dealing are binding only insofar they have been specifically agreed to in writing by a Director of the Company and any purported provisions to the contrary are hereby excluded or extinguished.

2.2 In relation to certain Products the Company provides a fulfilment service on behalf of the Publisher.

3 QUOTATIONS AND ACCEPTANCE

3.1 Quotations issued by the Company whether verbally or in writing do not constitute offers and the Company reserves the right to withdraw or revise the same at any time prior to the Company’s acceptance of the Buyer’s order

3.2 The Company’s acceptance of the Buyer’s order shall be effective only when an authorised executive of the Company sends to the Buyer an Order Acknowledgement and confirms in writing the anticipated date of delivery of the Products

4 PRICES

4.1 The Company shall have the right at any time prior to delivery of the Products to withdraw any discount from its normal prices as listed or quoted and/or to revise prices to take into account increases in costs prior to delivery including (without limitation) costs of any components of the Products, other materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.

4.2 The Company shall notify the Buyer of any such variation in the prices stated before delivery of the Products.

4.3 Unless otherwise specified, prices are exclusive of packing, carriage, VAT, insurance and any other duty or tax payable by the Buyer which shall be added to the price.

5 DELIVERY

5.1 The Company will use all reasonable endeavours to deliver the Products at the time notified by the Company to the Buyer but delivery dates shall be regarded as estimates only and not of the essence. The Company shall not be liable for any delay occasioned by any cause whatsoever

beyond the Company's control. If the Company (because of its own fault) fails to deliver the Products by the estimated delivery date and the estimated delivery date is exceeded by a period not customary in the trade and delivery is not completed within a reasonable period after receipt of a written notice from the Buyer requesting that the Company complete delivery, the Buyer may by notice in writing to the Company elect the Contract as repudiated provided always that no such election may be made if the Buyer is in default of its obligations under this Contract or any other contract with the Company.

- 5.2 Delivery of the Products shall take place DDP (Incoterms 2000) the Buyer's address as stated on the Buyer's order unless otherwise agreed in writing by the Buyer and the Company.
- 5.3 In the case of delivery of Products by instalments, the Buyer will not be entitled to treat the delivery of faulty Products in any one instalment or the non-delivery of any one instalment as a repudiation of the whole Contract
- 5.4 If the Buyer refuses or fails to take delivery of any of the Products tendered in accordance with the Contract or fails to take any action necessary on its part for delivery of any of the Products so tendered, the Company shall be entitled to immediate payment in full for all of the Products so tendered. The Company shall be entitled to store at the risk of the Buyer any Products of which the Buyer refuses or fails to take delivery of and the Buyer shall, in addition to the purchase price, pay all costs of such storage (including the cost of insurance) and any additional costs incurred as a result of such refusal or failure. The Company shall be entitled, after the expiration of one month from the date upon which the price became payable, to dispose of the Products in such manner as the Company may determine.
- 5.5 Unless otherwise stated, the Products will be consigned by any mode of delivery determined by the Company to the address as stated on the Buyer's order unless otherwise agreed in writing by the Buyer and the Company.
- 5.6 Packing cases and materials are non-returnable unless otherwise stated by the Company.

6 RISK AND TITLE TO PRODUCTS

- 6.1 The risk in the Products passes to the Buyer upon delivery of the Products in accordance with clause 5.2.
- 6.2 Subject to clause 6.6 below, the property in the Products remains vested in the Owner and shall only pass from the Owner to the Buyer upon full payment being made by the Buyer of all sums due on whatsoever account or grounds to the Company from the Buyer.
- 6.3 In the event of the Products being sold by the Buyer in such a manner as to pass to a third party a valid title to the Products, whilst any such sums are due as aforesaid, the Buyer shall be the trustee for the Owner of the proceeds of such sale or to the claim for such proceeds and the Buyer shall place such proceeds in a separate bank account. The Owner's rights under this clause 6.3 shall attach to the proceeds of such sale. Nothing herein shall constitute the Buyer the agent of the Owner for the purposes of any such sub-sale.
- 6.4 The Buyer agrees that prior to full payment being made as aforesaid, the Company may at any time repossess the Products and enter upon the Buyer's premises and remove the Products therefrom (and dispose of the same in any manner it may decide) and that prior to such payment the Buyer shall keep such Products as fiduciary agent and bailee and separate and identifiable for this purpose.
- 6.5 In the event of the Products becoming constituents of or being converted into other products whilst sums are due as provided in clause 6.3 hereof, the Owner shall have the ownership of and title to such other products (but not by way of a charge) as if they were the Products and accordingly this clause 6.5 shall so far as appropriate apply to such other products subject to the Buyer's right to the surplus of any monies realised by the said products in excess of those due to the Owner as provided herein.
- 6.6 The Buyer shall be entitled to sell the Products and pass property in the same to third parties in the normal course of its business or manufacture products out of the same or sell such products until otherwise notified to the Buyer by the Company or until the happening of any of the following events (whichever is earlier):
 - 6.6.1 any notice to the Buyer that an administrative receiver or other receiver or manager is to be or has been appointed in respect of its undertaking or a material part thereof or other property or assets; or
 - 6.6.2 any notice to the Buyer that a petition to wind up the Buyer is to be or has been presented

to the Buyer under section 124 of the Insolvency Act 1986 or otherwise or any notice to the Buyer of a proposal to pass a resolution to wind up the Buyer (including any proposal by the Buyer so to do); or

- 6.6.3 a decision by the Buyer to make a voluntary arrangement or composition with its creditors or any notice to the Buyer and/or any of its creditors that a proposal for the same is to be or has been made; or
- 6.6.4 the Buyer becoming unable to pay its debts, or appears to be unable to pay its debts or appears to have no reasonable prospect of paying its debts, as such expressions are defined by the Insolvency Act 1986; or
- 6.6.5 any distress or execution is levied or is threatened to be levied on any property or assets of the Buyer; or
- 6.6.6 any notice to the Buyer that it is to be the subject of a petition for an administration order presented to the courts or the making of any administration order in respect of the Buyer; or
- 6.6.7 the Buyer ceasing or threatening to cease trading; and upon the happening of any such events the Buyer shall immediately notify a Director or other authorised executive of the Company.

6.7 On receipt of written notice from the Company or on the happening of any of the events set out in clause 6.6 above, the Buyer's express or implied authority to sell the Products shall immediately be withdrawn and all such Products and products made therefrom shall immediately be delivered to the Company at the cost and risk of the Buyer

6.8 The Buyer shall insure and keep insured the Products to their full value against all normal commercial risks from the date of delivery until the date that the property in the Products passes from the Owner and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to any other rights of the Owner, if the Buyer fails to comply fully with the terms of this clause 6.8, all sums whatever owing by the Buyer to the Owner shall immediately become due and payable.

7 NOTIFICATION OF LOSS OR DAMAGE AND PARTIAL REJECTION

7.1 The Company must be informed in writing within three days (excluding Saturdays, Sundays or public holidays) of delivery of the Products in the event of any damage or defect discoverable upon reasonable examination or any shortage in the quantity of the Products delivered and within seven days (excluding Saturdays, Sundays or public holidays) of receipt of invoice if the Products have not been delivered.

7.2 Claims in respect of damage or defects not discoverable upon reasonable examination under clause 7.1 must be notified in writing to the Company immediately upon discovery but in any event within three months of the date of delivery.

7.3 In the absence of notification pursuant to clause 7.1 or 7.2, the Products shall be deemed to have been accepted by the Buyer as being in good order and in conformity with the Contract.

7.4 The Buyer waives any right of partial rejection of the Products it may have pursuant to the provisions of section 35A of the Sale of Goods Act 1979 (as amended).

8 PAYMENT

8.1 Payment of invoices shall unless otherwise agreed in writing be made in full on the 15th day of the month following invoice date or the due date stated on the invoice provided to the Buyer by the Company in respect of the Products.

8.2 Failure to make due payment in respect of any deliveries or instalments under this Contract or any other contract between the Buyer and the Company shall entitle the Company to delay, suspend or cancel deliveries in whole or in part at its option.

8.3 Any extension of credit allowed to the Buyer may be changed or withdrawn at any time.

8.4 If payment is not made in full by the due date:

8.4.1 the Owner reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on any overdue payments (such interest to accrue on a day to day basis from the due date for payment until receipt by the Company of the full amount whether before or after any judgment); and

8.4.2 the Buyer shall indemnify the Owner against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by the Owner in recovering sums due or in exercising its right pursuant to clause 6, in each case without prejudice to any other rights or remedies available to the Owner; and

- 8.4.3 without prejudice to the rights contained in clauses 8.4.1 and 8.4.2 or any other rights or remedies under statute or common law, the Company may suspend deliveries under the Contract or any other contract so long as the default continues and treat the Contract as repudiated by the Buyer.
- 8.5 Payment shall be due whether or not property in the Products has passed by virtue of clause 6 above and the Owner shall (without prejudice to any other right or remedy) accordingly be entitled to sue for the price once the same is due even if property in the Products has not passed.
- 8.6 All amounts due under this Contract shall be paid in full without any deduction or withholding other than as required by law or with the prior approval of the Owner.
- 8.7 The Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Owner in order to justify withholding payment of any such amount in whole or in part.
- 8.8 The Company shall have no liability to the Buyer in respect of any rebate agreed to be made by a Publisher and shall process Publisher approved credits only by way of deduction from future invoices relating to Products sourced from that same Publisher.

9 LIABILITY

- 9.1 The Buyer shall inspect the Products upon delivery. The Company will make good at its option by repair or replacement any defects, damage or shortages in the Products which occur prior to delivery which are notified in writing to the Company in accordance with the provisions of clauses 7.1 and 7.2 provided that:
- 9.1.1 the aforesaid obligations on the Company shall not extend to defects caused by wilful damage, negligence (other than by employees or agents of the Company), incorrect storage, application, movement or installation, defects caused by fair wear and tear or alteration or repair of the Products without the prior written approval of the Company;
- 9.1.2 if required by the Company and at the Buyer's cost the Products are returned within fourteen days of notification of the defect packaged and transported in accordance with the Company's requirements; and
- 9.1.3 the aforesaid obligations on the Company shall in any event only apply for a period of three months from the date of delivery.
- 9.2 Save as herein set out and for liability for death or personal injury resulting from negligence on the part of the Company and save for breach of the Company's statutorily implied undertakings to title, all express or implied conditions, representations or warranties as to description, quality or fitness of the Products or otherwise are expressly excluded.
- 9.3 Save for liability for death or personal injury resulting from negligence of the Company, the Company's aggregate liability arising out of or in connection with the Contract howsoever such claim or claims arise (be it by negligence, breach of contract, misrepresentation or otherwise) shall in no circumstances exceed the amount paid by the Buyer to the Company under the Contract PROVIDED THAT the Company shall not be liable for any indirect or consequential loss or damage, costs or expenses, including but not limited to, loss of profit, loss of business, loss of revenue or depletion of goodwill (whether arising by the Company's negligence or otherwise).

10 FORCE MAJEURE

- 10.1 The Company shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Products by the Company being prevented, hindered, delayed or rendered uneconomic, by reason of circumstances or events beyond the Company's control including but not limited to Act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty of increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of Products or raw materials therefor by the Company's normal source of supply or the manufacture of the Products by the Company's normal means or the delivery of the Products by the Company's normal route or means of delivery.
- 10.2 If, due to any of the circumstances or events set out in clause 10.1 above, the Company has insufficient stocks to meet all its commitments the Company may apportion available stocks between the Buyer and its other customers at its sole discretion.

11 COMMUNICATIONS

- 11.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
- 11.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 11.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 11.2 Communication shall be deemed to have been received:
- 11.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- 11.2.2 if delivered by hand, on the day of delivery;
- 11.2.3 if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

12 LICENCES AND CONFIDENTIALITY

- 12.1 The Company does not grant any right to the Buyer in respect of the computer programs contained within the Products other than the right for the Buyer to:
- 12.1.1 resell the Products to consumers and to grant a non-exclusive licence for such consumers to copy the computer programs contained within the Products by way of loading the programs onto computers and replaying the same; and
- 12.1.2 use the computer programs incorporated in the Products for the purpose of testing their usability and compliance with description and for demonstration purposes only.
- 12.2 The Buyer shall notify the Company of any attempt by any third party to prevent the Buyer from exercising the rights set out in clause 12.1.
- 12.3 The Buyer shall not without the prior written consent of the Company disclose any processes or know-how that becomes known to it in respect of the Products and it shall procure that its employees are bound by the provisions of this clause. The Buyer shall be liable for any breach of this clause by its employees.

13 SEVERANCE AND WAIVER

- 13.1 In the event of any part of these Conditions being ineffective for any reason, the remainder thereof shall constitute the Conditions binding upon the parties.
- 13.2 Failure or neglect by the Company to enforce at any time any of the provisions hereof shall not be construed as nor be deemed to be a waiver of the Company's rights hereunder nor shall such failure or neglect in any way affect the validity of the whole or any part of these Conditions and the Company's right to take subsequent action shall not be prejudiced thereby.

14 ASSIGNMENT

- 14.1 The Company shall be entitled to assign part or all of its rights and duties hereunder to a third party provided that the Company shall notify the Buyer of such assignment.

15 THIRD PARTY RIGHTS

- 15.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

16 ENTIRE AGREEMENT

- 16.1 The Contract constitutes the entire understanding between the parties in connection with the subject matter hereof and supersedes and extinguishes all prior agreements, negotiations and discussions in relation to it. Each party acknowledges that in entering into the Contract it does not do so on the basis of, and does not rely on any representation, unless made fraudulently, warranty or other provision not expressly contained in the Contract.

17 LEGAL INTERPRETATION

- 17.1 Any agreement to which these Conditions apply shall be governed and construed in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.