

Indifit website – Terms & conditions

Terms and Conditions

CONDITIONS OF SALE

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 estimated by the Seller for the delivery of the Goods.
- 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 Indifit Limited, 34-37 Raynham Road Industrial Estate, Bishop's Stortford, Hertfordshire CM23 5PE

2. Conditions applicable

- 2.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions 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 Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the 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 Seller's quoted price. The price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price the carriage charge and VAT shall be due when the order is placed unless the Buyer has a credit account with the Seller when payment shall be due on the last working day of the month following the end of the month in which the Goods are delivered. Time for payment shall be of the essence and the Seller shall be entitled to sue for the Price carriage charge and interest whether or not the property in the Goods has passed to the Buyer
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above Lloyds TSB Bank plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.
- 3.4 The Seller reserves the right to increase the Price in the event of the Buyer purchasing a smaller quantity of Goods than that for which the Seller quoted.

4. The Goods

- 4.1 The Goods shall be supplied in accordance with the description contained in the Seller's specification and quotation which shall be valid for 30 days from the date on which it is sent or made known to the Buyer.
- 4.2 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 4.3 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 such discrepancy in quantity shall not exceed 10% the Price shall be adjusted pro rata to the discrepancy.

5. Warranties and liability

- 5.1 The Goods will at the time of delivery correspond to the description given by the Seller. Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded.
- 5.2 All terms, conditions and warranties (whether implied or made express) whether by the Seller or its servants or agents or otherwise (other than those express warranties set out in the current edition of the Seller's specification) 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 on the Delivery Date and for this purpose time shall not be of the essence. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 6.2 The Seller may deliver the Goods by separate instalments. Each separate instalment shall

be invoiced and paid for in accordance with the provisions of this contract of sale.

6.3 The failure of the Seller to deliver any one or more of the said instalments of the Goods on the due dates shall not entitle the Buyer to treat this contract as repudiated.

6.4 The failure of the Buyer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the sole option of the Seller):

6.4.1 without notice to suspend further deliveries of the Goods pending payment by the Buyer, and/or

6.4.2 to treat this contract as repudiated by the Buyer.

7. Acceptance of the Goods

7.1 The Buyer shall be deemed to have accepted the Goods 3 days after delivery to the Buyer unless within that period the Buyer shall give written notice of discrepancies to the Seller.

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

8. Risk and Title

8.1 Risk shall pass to the Buyer so that the Buyer is responsible for all loss damage or deterioration to the Goods:

8.1.1 if the Seller delivers the Goods by its own transport or carrier at the time when the Goods or a relevant part thereof arrive at the place of delivery or

8.1.2 in all other circumstances at the time when the Goods or a relevant part thereof leave the premises of the Seller

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 payment 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 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 use or sell the Goods in the ordinary course of the Buyer's business to customers who are not controlled by the Buyer or who do not control the buyer or who are not in common control with the Buyer 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 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 any 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 is any of the Goods has 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 resold 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.

8.7 The Buyer shall not pledge or in any way charge by way of security for indebtedness any of the Goods which are the property of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

9. Remedies of Buyer

9.1 Where the Buyer rejects any Goods the Buyer shall have no further rights whatsoever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.

9.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.

9.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.

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

9.5 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be deemed to be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

10. Indemnity

The Buyer shall indemnify and keep indemnified the Seller against any loss damage cost charge expense claim action proceeding fine penalty or other liability resulting from infringement of copyright patent trade mark or other right of privilege of any third party arising from the Buyer's design, specification or instructions or from the Seller's compliance therewith.

11. Confidential Information

All secret or confidential information relating to the Seller's business and processes which may come or have come into the possession of the Buyer in connection with this Contract shall be kept secret and confidential by the Buyer and shall not be disclosed to any third party without the

prior consent in writing of the Seller.

12. Notices

Any notice required hereunder may be given by first class pre-paid post or by fax with receipt acknowledged to the postal or fax address of the office of the Seller or the Buyer's address as set out in the Contract or to such other address as may have been duly notified to the Seller. Any notice given by post will be deemed to be given on the second business day after posting and any fax shall be deemed to have been received at the time of despatch.

13. Assignment

The Buyer shall not without prior consent in writing of the Seller assign or transfer the Contract or the benefit thereof or any part thereof to any other parties.

14. Insolvency and Termination

If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits to any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or is any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:

14.1 suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or

14.2 exercise any of the rights pursuant to clause 8.

15. Set off and Counterclaim

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or allege to have or for any reasons whatever.

16. General

16.1 Headings

All headings are for ease of reference only and shall not affect the construction of this contract.

16.2 Severance

Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.

16.3 Waiver

No waiver forbearance by the Seller (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.

16.4 Sub-Contracting

The Seller may licence or sub-contract all or any part of its rights and obligations under this contract without the Buyer's consent.

17. Force Majeure

The Seller shall not be liable for any default due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest or any other event beyond the reasonable control of the Seller.

18. Seller's Right to Cancellation

The Seller may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

19. Proper law of Contract

This contract is subject to the law of England and Wales.