

MADGE LIMITED
TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

"Buyer" means the person, firm or company who purchases Products from Madge.
"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) include any special terms and conditions agreed in writing between the Buyer and Madge.
"Contract" means any contract between Madge and the Buyer for the sale and purchase of Products, incorporating these terms and conditions.
"Products" means the articles, things, computer programs or services (if any) to be supplied by Madge to the Buyer (including any part or parts of them).
"Madge" means Madge Limited (company number 4682844) whose place of business is at Madge House, Priors Way Maidenhead, Berkshire, SL6 2HP, United Kingdom.

2. APPLICATION OF CONDITIONS

2.1 Subject to any special terms and conditions agreed in writing between the Buyer and Madge, these Conditions will govern the Contract to the entire exclusion of all other terms and conditions, including, without limitation, any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.
2.2 These Conditions apply to all sales by Madge. No oral, written or other addition or waiver or variation to these Conditions will be effective unless expressly agreed in writing and signed by an authorised officer of Madge.
2.3 None of our employees, other than the Secretary or a Director of the Company, is authorised to make any statement or warranty or representations as to the Products. We shall therefore be under no liability whatsoever nor shall the Customer be entitled to any remedy by reason of the Misrepresentation Act 1967 except to the extent (if any) that the Court or any arbitrator may allow reliance on it as being fair and reasonable.
2.4 The giving of any delivery instructions, the acceptance of or payment for any Products or services or any other conduct in confirmation of the transaction hereby contemplated shall constitute unqualified acceptance of these Conditions by the Buyer.

3. ORDERS AND SPECIFICATIONS

3.1 Each order for Products by the Buyer from Madge will be deemed to be an offer by the Buyer to purchase the Products subject to these Conditions and will be by way of written purchase order submitted to Madge.
3.2 No order placed by the Buyer will be deemed to be accepted by Madge until a written acknowledgement of order is issued by Madge or (if earlier) Madge delivers the Products to the Buyer.
3.3 If requested by Madge, the Buyer will complete a credit account application form and the Buyer will consent to Madge making the necessary credit checks against the details in such form unless specifically agreed to the contrary in writing.
3.3 All drawings, descriptive matter, specifications and advertising issued by Madge are for the sole purpose of giving an approximate idea of the Products described in them. They will not form part of the Contract.
3.5 No order which has been accepted by Madge may be cancelled or rescheduled by the Buyer except with the agreement in writing of Madge and on terms that the Buyer will indemnify Madge in full against all loss, costs, damages, charges and expenses incurred by Madge as a result of such cancellation or rescheduling.

4. PRICE AND PAYMENT

4.1 The price of the Products will be Madge's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Madge's current price list at the date of acceptance of the order by Madge. Any quotation is valid for a period of 30 days from its date provided that Madge has not previously withdrawn it.
4.2 Unless otherwise agreed in writing between Madge and the Buyer, all prices are given by Madge on a Delivered Duty Unpaid basis (in accordance with Incoterms 2000), so that Madge will deliver the Products to the Buyer and the Buyer will be responsible for all duties and taxes due on the Products. Madge will nominate, arrange and pay for the carrier, however for any orders of less than US\$2,000, Madge reserves the right to charge all freight costs.
4.3 The price of the Products will be exclusive of any value added or other sales tax, which the Buyer will also pay when it is due for the Products.
4.4 The Buyer will pay the price of the Products (without any deduction) within 30 days of the date of Madge's invoice and payment will be made to the party set out on the invoice sent to the Buyer.
4.5 All payments payable to Madge under the Contract will become due immediately upon termination of this Contract despite any other provision.
4.6 Interest will be chargeable on any amounts overdue at the rate of 5% per annum above the then current base rate of HSBC Bank Plc, from the due date of payment until receipt by Madge of the full amount whether or not before or after judgment and without prejudice to any other right or remedy of Madge.

5. DELIVERY

5.1 Delivery of the Products will be made by Madge delivering the Products to the Buyer.
5.2 Any dates specified by Madge for delivery of the Products are an estimate only and time for delivery will not be made of the essence by notice. If no dates are specified, delivery will be within a reasonable time.
5.3 Subject to the other provisions of these Conditions, Madge will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Products. In any event, any liability of Madge for non-delivery of the Products will be limited to supplying the Products within a reasonable time or issuing a credit note against any invoice raised for such Products.
5.4 If for any reason the Buyer will not accept delivery of any Products when they are ready for delivery, or Madge is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisation then: (a) risk in the Products will pass to the Buyer; (b) the Products will be deemed to have been delivered; and (c) Madge may store the Products until delivery whereupon the Buyer will be liable for all costs and expenses related to such non-acceptance.
5.5 Where Products are to be delivered in instalments, each delivery will constitute a separate contract and failure by Madge to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments will not entitle the Buyer to treat the Contract as a whole as repudiated.
5.6 Unless we are notified to the contrary by telephone or telex on the day of delivery and such notification is confirmed in writing within two days of delivery the Products shall be deemed to have been accepted by the Customer as being in good condition and in accordance with the Contract. The Customer shall not be entitled to withhold payment of all or any of the purchase price while any claim is being investigated by us.

6. RISK AND TITLE

6.1 The Products are at the risk of the Buyer from the time of delivery in accordance with Condition 5.1.
6.2 Notwithstanding delivery and the passing of risk in the Products, ownership of the Products will not pass to the Buyer until Madge has received payment in full for those Products together with any other Products in respect of which payment is still outstanding.
6.3 Until ownership of the Products has passed, the Buyer will keep the Products insured and will hold them as trustee for Madge provided that the Buyer will be entitled to resell or lease such products in the ordinary course of its business in which case the resulting proceeds of sale or lease and any proceeds of any insurance claim will be held by the Buyer on trust for Madge.

6.4 The Buyer grants Madge, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or to recover them.
6.5 Madge will be entitled to recover payment for the Products notwithstanding that ownership of the Products has not passed from Madge.

7. WARRANTY AND LIABILITY

7.1 The provisions set out in this Condition 7 sets out the entire liability of Madge (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of breach of these Conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with these Conditions.
7.2 The terms of the Madge Standard License and Limited Warranty Agreement, which is incorporated herein by, reference and which is shipped by Madge with all Products will apply to any Products purchased by the Buyer pursuant to a Contract.
7.3 Subject to Conditions 7.2 and 7.3, 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 other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
7.4 Where the Products are sold under a consumer transaction, the statutory rights of the Buyer are not affected by these Conditions.
7.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Products or their failure to correspond with specification such defect or failure being apparent upon inspection will (whether or not delivery is refused by the Buyer) be notified to Madge within 7 days from the date of delivery. If the Buyer does not notify Madge within this period the Buyer will not be entitled to reject the Products and Madge will have no liability for such defect or failure. Any defects in materials or workmanship not apparent upon inspection as referred to in this Condition, may be subject to the terms of the Madge Standard License and Limited Warranty Agreement, which will be shipped with the Products.
7.6 Where any valid claim in respect of the Products based on any defect in the quality or condition of the Products or their failure to meet specification is notified to Madge in accordance with these Conditions, Madge will be entitled to replace the Products free of charge or, at Madge's sole discretion, refund to the Buyer the price of the Products, but Madge will have no further liability to the Buyer.
7.7 Nothing in these Conditions excludes any liability of Madge for death or personal injury caused by Madge's negligence or fraudulent misrepresentation.
7.8 Subject to Conditions 7.1, 7.2 and 7.3, Madge's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise, arising in connection with the performance or contemplated by the performance of these Conditions (including, without limitation, any liability under the Madge Standard License and Limited Warranty Agreement referred to in Condition 7.2) shall be limited to US\$75,000 (seventy five thousand dollars) and Madge shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or reputation, loss of expected future business, damages, costs or expenses payable to any third party, or otherwise), costs, expenses or other claims for consequential compensation whatsoever and howsoever caused, which arises out of or in connection with these Conditions.

8. INSOLVENCY OF THE BUYER

8.1 This Condition applies if (a) the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or (c) if the Buyer suffers any similar or analogous action to those actions referred to in Conditions 8.1(a) and 8.1(b) in consequence of debt in any jurisdiction or (d) the Buyer ceases, or threatens to cease, to carry on business; or (e) Madge reasonably believes that any of these events is about to occur.
8.2 If this Condition 8 applies then, without prejudice to any other right or remedy available to Madge, Madge shall be entitled to cancel the Contract and /or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Products have been delivered but not paid all of the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

9. GENERAL

9.1 Madge may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group. Subject to this, the parties to a Contract do not intend that any term of a Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
9.2 Madge reserves the right to assign some or all of the debt due under this Contract, for example via a factoring or invoice discounting arrangement to any third party it chooses.
9.3 Any notice required or permitted to be given by either party to the other under these Conditions will be in writing addressed to that other party at its registered office or principal place of business or such other address as the recipient may designate by notice given in accordance with the provisions of this Condition. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and will be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.
9.4 The Buyer will not be entitled to assign the Contract or any part of it without the prior written consent of Madge. Madge may assign the Contract or any part of it to any person, firm or company.
9.5 Madge will not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a result of the performance of Madge's obligations under the Contract being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond Madge's reasonable control including, but not limited to, an Act of God, war, riot, strike, lockout, trade dispute or labour disturbance, accident, breakdown of plant machinery, fire, flood, and storm.
9.6 If any provision of these Conditions is found by a court of or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Conditions which will remain in full force and effect.
9.7 Failure by Madge to exercise or enforce any rights under these Conditions will not be deemed a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter. Each right or remedy of Madge under the Contract is without prejudice to any other right or remedy of Madge whether under the Contract or not.
9.8 These Conditions constitute the entire understanding between the parties with respect to the Contract and supersede all prior agreements, negotiations and discussions between the parties. Madge and the Buyer agree that in entering into these Conditions, and any documents referred in it, it does not rely on, and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to these Conditions or not) other than expressly set out in these Conditions. Nothing in this Condition shall however operate to limit or exclude any liability for fraud.
9.9 All technical information, advice, know-how, drawings, designs, specifications and other things communicated or supplied by Madge to the Buyer are confidential and remain the property of Madge. Such information shall not without Madge's written consent be disclosed or shown to any third party and will be used solely for the purposes of the Contract. The existence and details of the Contract will be treated as confidential information, which will not be disclosed to any third party without the written consent of Madge.
9.10 The formation, existence, construction, performance, validity and all aspects of the Contract will be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.