

XP PLC (the "Seller") TERMS AND CONDITIONS OF SALE

Definitions

"Contract" means each contract for the supply of Goods made between the Purchaser and the Seller.

"Goods" means products sold by the Seller to the Purchaser.

"Purchaser" means the customer who has ordered the Goods.

"Seller's Proceeds" means a sum equal to the purchase price of the Goods under the Contract.

1. Applicable Conditions

(a) Unless otherwise agreed in writing, Goods are supplied only on these conditions, and these conditions alone shall govern and be incorporated in every Contract for the sale of Goods made by or on behalf of the Seller with a Purchaser. A variation of these conditions is valid only if it is in writing and signed by an authorised representative of the Seller. The giving by the Purchaser of any delivery instructions for the Goods or any part thereof, or the acceptance by the Purchaser of delivery of the Goods or any part thereof (or any conduct by the Purchaser in confirmation of the transaction set out on the face hereof after receipt by the Purchaser of this document) shall constitute unqualified acceptance by the Purchaser of these conditions.

(b) Catalogues, price lists and advertising matter are only an indication of the type of Goods offered and no prices or other particulars contained therein shall be binding on the Seller.

2. Prices and Payment

(a) Quotations and offers are open for acceptance within 30 days from date thereof, and are subject to written confirmation of acceptance. The Seller reserves the right to withdraw or revise any quotation or offer either verbally or in writing prior to the Seller's acceptance of the Purchaser's order and no liability whatsoever shall be incurred by such withdrawal or revision.

(b) Payment shall be made in full within 30 days from date of invoice unless otherwise agreed in writing by the Seller's authorised representative. Time of payment is of the essence of the contract. The Seller reserves the right to suspend the provision of Goods to the Purchaser where any amounts are overdue under any contract with the Purchaser until all such amounts have been paid.

(c) The Purchaser shall not be entitled to make any deduction from the price in respect of any set-off, counter-claim, abatement or analogous deduction to withhold payment of any amount due to the Seller unless both the validity and the amount thereof have been admitted by the Seller in writing.

(d) If, in the opinion of the Seller, the credit-worthiness of the Purchaser deteriorates before delivery of the Goods, the Seller may require full or partial payment of the price prior to delivery or the provision of security for payment by the Purchaser in a form acceptable to the Seller.

(e) Unless otherwise specified VAT and any other tax or duty payable by a Purchaser shall be added to the price.

(f) Unless otherwise stated prices quoted are ex works the Seller's UK warehouse. If the Seller has undertaken to provide or arrange carriage to a destination agreed with or specified by the Purchaser such carriage shall be charged in addition to the price unless otherwise expressly agreed by the Seller in writing.

3. Passing of Property

(a) Notwithstanding delivery and passing of risk the Goods remain the property of the Seller until the Purchaser pays to the Seller the agreed price for the Goods (together with any accrued interest) and all other amounts owed by the Purchaser to the Seller in respect of any other Contract.

(b) Until such time as property in the Goods passes to the Purchaser, the Purchaser:

(i) holds the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Purchaser, identify the Goods as the Seller's property and keep them properly insured, stored and protected to prevent any damage or deterioration of them;

(ii) shall not pledge, grant a lien or in any way charge by way of security for any indebtedness any of the Goods;

(iii) shall give the Seller such information relating to the Goods as the Seller may from time to time require; and

(iv) may resell the Goods in the ordinary course of its business (provided that the Seller may revoke this permission at any time on reasonable notice to the Purchaser).

(c) Where the Purchaser resells the Goods in accordance with clause 3(b)(iv) the Purchaser shall:

(i) hold in a fiduciary capacity on trust for the Seller from the proceeds of such resale the Seller's Proceeds; and

(ii) keep the Seller's Proceeds separate from any monies or property of the Purchaser and third parties in a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Seller and, in the case of tangible proceeds, properly insured, stored and protected to prevent any damage or deterioration of them.

(d) The Seller reserves the right to repossess and resell any of the Goods to which it has retained title and the Purchaser shall be bound at the request of the Seller to deliver up the Goods to the Seller.

(e) Until such time as property in the Goods passes to the Purchaser the Purchaser grants an irrevocable right and license to the Seller and its employees and agents to enter the Purchaser's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing Goods. This right and license shall continue to subsist notwithstanding the termination for any reason of a Contract and is without prejudice to any accrued rights of the Seller under a Contract or otherwise.

(f) The provisions of this condition 3 shall be without prejudice to the obligation of the Purchaser to purchase the Goods and notwithstanding the provisions of this condition 3 the Seller may:

(i) bring an action against the Purchaser for the price of the Goods in the event of non-payment by the Purchaser by the due date even though property in the Goods has not passed to the Purchaser;

(ii) by notice to the Purchaser at any time after delivery pass property in the Goods to the Purchaser with effect from the date of the notice.

4. Delivery

(a) Where products are to be delivered by the Seller's carrier to an address designated for delivery thereof by the Purchaser, the risk will pass when the Goods have been so delivered.

(b) The Seller shall make every endeavour to adhere to any agreed delivery schedule. Such schedule is of no contractual effect and time for delivery is not of the essence of the contract and shall not be made so by delivery of any notice.

(c) If the Seller is prevented (directly or indirectly) from supplying the Goods or any part thereof by reason of acts of God, war, strikes, lockouts, trade disputes, fires, breakdowns, interruption of transport, Government action, delays in the manufacturing process or late delivery of parts, delays in or failures of delivery to the Seller of any Goods or materials or any cause whatsoever (whether or not of the like nature to those specified above) outside his control the Seller shall be under no liability whatsoever to the Purchaser and the Seller shall be entitled at his option either to cancel this contract or to extend the time of his performance by a period equivalent to that during which his performance has been prevented by the circumstances herein before referred to.

(d) The Purchaser shall not be entitled to make any claims against the Seller for any shortfall in the quantity of the Goods specified in the dispatch note or, where the Seller is responsible for the carriage of the Goods, any damage to or non-delivery of all or any part of the Goods unless the Seller is informed in writing of such shortfall, damage or non-delivery within such time as will enable the Seller to comply with the Seller's carrier's conditions of carriage or within 7 days of the date of the invoice/dispatch note, whichever is the shorter.

(e) Section 32(2) of the Sale of Goods Act 1979 does not apply. The Seller is not required to give the Purchaser the notice specified in section 32(3) of the Act.

(f) If the Purchaser refuses or fails to take delivery of Goods tendered in accordance with the Contract or fails to take any action necessary on its part for delivery and/or shipment of the Goods, the Seller is entitled to terminate the Contract with immediate effect; to dispose of the Goods as the Seller may determine, and to recover from the Purchaser any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).

(g) Delivery by installments will only be accepted when the period of the installments does not exceed 12 months. If delivery is effected by installments each installment shall be treated as a separate contract. Rescheduling charges will be made at the discretion of the Seller.

5. Specification

The Seller accepts no liability for any errors, omissions or other defects in any drawings, designs, technical data or specifications either supplied by the Purchaser or a third party manufacturer, and accepts no liability for any loss or damage resulting from curtailment or cessation of supplies following any variation in or from such drawings, designs, technical data or specifications.

6. Warranty

Unless otherwise specified or agreed in writing with the Purchaser, the Seller will at his option either repair or replace, without charge, any part or parts of the Goods which are shown to the Seller's satisfaction to be defective (other than as a result of fair wear and tear) within thirty six calendar months in respect of standard products or twelve months in respect of V- Brand and non-standard products of the date on which the original Goods shall first have been dispatched from the Seller's warehouse and which are carefully packed and returned at the Purchaser's expense to the Seller's warehouse, clearly marked with a Return Material Authorisation (RMA) number obtained from the Seller prior to return provided that the defect is not due to mistreatment, lack of proper maintenance or failure to observe any operating instruction issued by the Seller in connection therewith. Returns should be sent to XP Plc, Unit B2 Deacon Way, Tilehurst, Reading, RG30 6BZ. Except as set out in these conditions, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the Goods are excluded.

7. Cancellation

The Purchaser may not cancel the Contract without the consent of the Seller. If consent is given, the Purchaser shall indemnify the Seller against all loss, damage claims or actions arising out of such cancellation unless otherwise agreed in writing.

8. Liability

(a) The Seller's entire liability and the Purchaser's exclusive remedy for any cause of action arising out of this Contract is expressly limited to replacement by the Seller of non-conforming Goods and delivery to the Purchaser's plant, or at the Seller's option, payment not to exceed the purchase price of the Goods giving rise to the cause of action.

(b) Nothing in these conditions shall operate to exclude or restrict the Seller's liability for:

- (i) death or personal injury resulting from negligence;
- (ii) breach of the obligations arising from Section 12 of the Sale of Goods Act 1979;
- (iii) fraud or deceit.

(c) In the event the Purchaser or any representative of the Purchaser shall alter or modify the Goods without the Seller's prior written consent and any claims are asserted against the Seller by reason of such alteration or modification the Purchaser shall defend, indemnify and hold the Seller harmless against any and all damages, liabilities, expenses and costs in connection therewith or resulting therefrom.

9. Packaging

The Purchaser shall meet the cost of any special packaging requested by the Purchaser or any packaging rendered necessary by delivery by any means other than the Seller's normal means of delivery. The Purchaser shall, unless otherwise agreed, be solely responsible for the disposal of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.

10. Licences and Consents

If a licence or consent of any government or other authority is required for the acquisition, carriage or use of the Goods by the Purchaser, the Purchaser shall obtain the licence or consent at its own expense and if requested produce evidence of it to the Seller on demand. Failure to obtain any licence or consent does not entitle the Purchaser to withhold or delay payment of the price. The Purchaser shall pay any additional expenses or charges incurred by the Seller resulting from such failure.

11. Termination

(a) On or at any time after the occurrence of any of the events in condition 11(b), the Seller may:

- (i) stop any Goods in transit;
- (ii) suspend further deliveries to the Purchaser;
- (iii) exercise its rights under condition 3;
- (iv) terminate any Contract with the Purchaser with immediate effect by written notice to the Purchaser.

(b) The events are:

- (i) the Purchaser being in material breach of an obligation under a Contract with the Seller;
- (ii) the Purchaser passing a resolution for its winding up or a court of competent jurisdiction making an order for the Purchaser's winding up or dissolution;

(iii) the making of an administration order in relation to the Purchaser or the appointment of a receiver over, or an encumbrancer taking possession of or selling, an asset of the Purchaser;

(iv) the Purchaser making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally; or

(v) the Purchaser ceasing to trade.

(c) Upon termination of a Contract pursuant to condition 4(c) or condition 11 any indebtedness of the Purchaser to the Seller becomes immediately due and payable and the Seller is relieved of any further obligation to supply Goods to the Purchaser pursuant to that Contract.

12. General

(a) The invalidity, illegality or unenforceability of the whole or part of a condition does not affect or impair the continuation in force of the remainder of these conditions.

(b) The failure by the Seller to exercise or delay by the Seller in exercising a right or remedy provided by a Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by a Contract or by law prevents a further exercise of the right or remedy or the exercise of another right or remedy.

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

(d) A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made under the statutory provision.

13. Governing Law

This Contract shall be construed and governed in all respects by English Law and, unless stated in writing, Goods shall not be required to comply with any provisions of any other law. All disputes arising under or relating to this contract shall be subject to the exclusive jurisdiction of the Courts of England.