

Buzzworks Card Services Ltd

TERMS & CONDITIONS OF SALE

1. DEFINITIONS

For the purpose of any Contract of which these terms and conditions apply the following words and expressions shall mean:

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| "Contract" | each order placed by the Customer and accepted by the Supplier, whether on its acknowledgement of order form or otherwise, which expressly incorporates these terms and conditions; |
| "Contract Price" | the price of Goods and Services sold or supplied by the Supplier to the Customer under any Contract; |
| "Customer" | the person to whom the Supplier's quotation or acceptance of order is addressed; |
| "Force Majeure" | any circumstances beyond a party's reasonable control including, without limitation, war, national emergency, civil disturbance, theft, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations, judicial or administrative decrees, failure of power or utility supplies (including telecommunications); "Goods" the Supplier's products as specified in the Contract; "Intellectual all rights enforceable in the Territory, in inventions, know Property Rights" how, patents, registered designs, design rights, database rights, trade marks, service marks, copyrights, semiconductor design rights and topography rights, and all similar rights whether or not registered and including any application or right to register the same; |
| "Services" | such support services as the Supplier may provide from time to time ancillary to the supply of the Goods including repairs, maintenance and upgrading; |
| "Software" | any software (including firmware) within the Goods; |
| "Supplier" | Buzzworks Card Services Limited, a company incorporated in England and Wales (company number 07432697) and having its registered office at 65 St Mary Street, Chippenham Wiltshire SN15 3JF; |
| "Warranty Period" | in the case of Goods the period of twelve (12) months from the date of despatch from the Supplier's premises and, in the case of Services, the period of three (3) months from completion of the Services or such other period as may be agreed in writing between the parties. |

2. QUOTATION AND CONDITIONS OF SALE

- Each quotation made by the Supplier shall be valid for a maximum period of sixty (60) days from the date thereof. Each quotation for Services is made on the basis that the Services will be performed in the UK.
- The Supplier shall sell Goods and Services to the Customer subject to these terms and conditions of sale only and to the exclusion (to the extent permissible by law) of all other terms, conditions, guarantees and warranties, whether express or implied, statutory or otherwise. The terms and conditions contained in any of the Customer's order forms shall not apply.

3. PRICES

- The Supplier will sell to the Customer Goods and Services at the Supplier's prices in force at the date of acceptance of the order by the Supplier. The prices for Goods shall be delivery Ex Works (Incoterms 2000) and shall be inclusive of the Supplier's standard packaging but exclusive of carriage and insurances charges.
- All prices quoted are exclusive of any applicable sales tax and any other taxes, duties and charges levied or assessed in the United Kingdom in connection with the sale/purchase and export/import of the Goods and Services. The Customer shall pay any applicable sales tax and any other taxes, duties and charges in addition to the Contract Price.

4. TERMS OF PAYMENT

- The Customer will pay the Contract Price for the Goods and Services (together with any applicable sales tax, duties and charges payable) in accordance with the payment terms agreed pursuant to clause 5.1.
- Payment will be paid in sterling without any withholding, deduction or setoff. If the Customer is in default with any payment then:
 - all sums due from the Customer to the Supplier shall become due and payable immediately without demand;
 - the Supplier may suspend the provision of any further Goods and Services to the Customer, and
 - the Customer shall pay the Supplier interest on all sums outstanding at an annual rate equal to 4% above the base rate of the Clydesdale Bank plc current from time to time until payment is made in full (whether before or after judgement).

5. DELIVERY

- Following receipt of an order from the Customer and any required payments, the Supplier will schedule the delivery of the Goods or Services. The Supplier will notify the Customer if there is likely to be any undue delay in shipment of the Goods or Services.
- the Supplier will not ship Goods until it has received such payment from the Customer, and shall not be liable for any delay in delivery caused by the failure of the Customer to make such payment on or prior any Agreed Delivery Date.
- Unless otherwise agreed in writing, the Supplier may deliver Goods prior to the Agreed Delivery Date and may deliver Goods in instalments by separate shipments.
- Unless otherwise agreed in writing, the Supplier shall deliver the Goods Ex-Works (Incoterms 2000) Dunfermline, Scotland and accordingly the Supplier shall not be

responsible for carriage or insurance costs and/or any damage to the Goods in transit.

6. POSTPONED DELIVERY

If the Customer requests the Supplier to postpone delivery, the Supplier may charge the Customer the reasonable additional costs of handling and storage. The Customer shall remain liable, however, to pay the Contract Price (and any applicable sales tax and any other taxes, duties and charges) in accordance with the payment terms agreed pursuant to clause 5.1.

7. CANCELLATION OF ORDER

The Customer shall not be entitled to cancel an order for Goods, in whole or in part, unless it pays the Supplier for any work done and materials purchased up to the date of cancellation and compensation of twenty per cent (20%) of the Contract Price of the relevant Goods cancelled provided that the aggregate sum payable by the Customer to the Supplier under this clause 8 shall in no event exceed the Contract Price of the relevant Goods.

8. PASSING OF RISK AND TITLE

- The risk of loss, damage or destruction of the Goods shall pass to the Customer on delivery.
- Title to the Goods, excluding Software, shall pass to the Customer upon receipt by the Supplier of the Contract Price in full.
- Until the Supplier has received the Contract Price in full for the Goods:
 - the Customer shall keep the Goods in the same condition as when delivered by the Supplier and clearly identified as the property of the Supplier;
 - the Customer shall keep the Goods insured against the risk of loss, damage or destruction for their full replacement value with a reputable insurance company and exhibit to the Supplier on request evidence of the Customer's compliance with this clause as often as reasonably requested by the Supplier; and
 - the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to re-sell or use the Goods in the ordinary course of its business. Any proceeds of sale or otherwise of the Goods shall be held by the Customer for the Supplier and shall not be paid into any overdrawn bank account.

9. SOFTWARE

- The Supplier hereby grants to the Customer a non-exclusive, non-transferable licence to use the Software solely with and for the operation of the Goods. Unless otherwise agreed in writing any Software provided shall be supplied in object code form only. The Customer shall not be entitled to supply or sub-license the Software to any third party.
- Copyright in and title to the Software shall at all times remain the property of the Supplier or its licensors. The Customer shall not, except to the extent permitted by law, copy, alter, decipher, analyse, decompile, reverse engineer or replace the Software, without the Supplier's prior written permission.
- Any permission given may be subject to such reasonable conditions as the Supplier shall determine.
- If requested by the Supplier the Customer undertakes to enter into any additional licence agreement for the Software.
- Upon termination of the Contract in accordance with clause 12 below the Customer shall forthwith return to the Supplier all Software and all copies thereof in its possession, or, if requested by the Supplier, destroy all such Software and all copies thereof and certify in writing that they have been destroyed.

10. WARRANTY

- The Supplier will, at its discretion, repair or replace or credit or reimburse the Customer with the Contract Price of any Goods which are defective as a result of defects in design, workmanship or materials provided that the Customer has given the Supplier written notice of the defect within the Warranty Period. 10.2 The Customer acknowledges that any Software supplied cannot be tested in every possible permutation and accordingly the Supplier does not warrant that the Software will be free of all errors or that its use will be uninterrupted. However, the Supplier shall use all reasonable skill and care to ensure that any errors in the Software which interfere with the proper operation of the Goods for the purpose for which they were designed, are corrected, provided that the Customer has given the Supplier written notice of such defect within the Warranty Period and can reproduce the error for the Supplier.
- The Supplier will rectify any failure by the Supplier to provide Services with due skill and care, provided that the Customer has given the Supplier written notice of such failure within the Warranty Period.
- If the Customer gives the Supplier notice of any defect, error or failure within the Warranty Period, it shall provide the Supplier with all information regarding such defect, error or failure which the Supplier may reasonably require and comply with any reasonable suggestions or instructions which the Supplier may offer with a view to diagnosis and/or remedy of such defect or error.
- If the Supplier is unable remotely to remedy any defect or error in the Goods the Supplier shall arrange, at its cost, for the return of the defective items and (unless a credit or refund is given) the delivery of the repaired or replacement items to the Customer.
- If the Supplier establishes that a reported defect, error or failure is not covered by the warranties given under this clause 10, the Customer shall be liable for the costs of the Supplier's investigative and remedial work and the repair or replacement of the

Goods at the Supplier's then current prices, and for all associated carriage and insurance costs.

- 10.7 The Supplier shall not be liable for any failure of the Goods caused by the use of the Goods in conjunction with any other equipment or software which has not been provided by the Supplier or caused by any use of the Goods other than for the purpose for which they were designed.
- 10.8 The warranties given under this clause 10 shall be void if any party other than the Supplier or its nominated repair service organisation has modified, altered, or added to or repaired the Goods or Software, or has attempted to do so.
- 10.9 The warranties given under this clause 10 are given in lieu of and to the extent permissible by law exclude all other guarantees, conditions and warranties implied by law including, without limitation as to satisfactory quality, fitness for purpose or correspondence to description or sample.
- 10.10 The remedies provided by this clause 10 are subject to the Customer complying with the provisions of this clause 10 and shall be the Customer's sole remedies in respect of any breach of warranty to the exclusion of all other remedies.

11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 11.1 Subject to the provisions of clause 14, the Supplier shall indemnify the Customer against any direct damages (excluding special, indirect or consequential damages), direct costs and direct expenses which may be finally awarded against the Customer by a court of competent jurisdiction as a result of any claim that any of the Goods or the Software or their use by the Customer infringes the Intellectual Property Rights of any third party in the Territory.
- 11.2 If any claim is made against the Customer which may give rise to a claim for indemnification under clause 13.1, the Supplier's obligation to indemnify the Customer shall be conditional upon the Customer:-
- 11.2.1 notifying the Supplier in writing of any such claim as soon as reasonably practicable but in the event not later than thirty (30) days from receipt thereof by the Customer;
- 11.2.2 not making any admission as to liability or agreeing to any settlement or compromise of any such claim without the prior written consent of the Supplier; and
- 11.2.3 allowing the Supplier, as its request and expense, to conduct and/or settle all negotiations, proceedings and litigation arising from any such claim and, at the Supplier's request and expense, giving the Supplier all reasonable assistance in connection with the conduct of any such negotiations, proceedings and litigation and acting in accordance with the reasonable instructions of the Supplier in connection therewith.
- 11.3 The obligation to indemnify under clause 13.1 shall not apply:
- 11.3.1 to any infringement arising as a result of the Goods or Software having been altered, modified or combined with other apparatus or software; or
- 11.3.2 to the extent that such claim relates to aspects of the Goods or Software developed or manufactured to designs or specifications provided by the Customer, or which otherwise incorporate documents, materials, ideas, data or other information provided by the Customer; or
- 11.3.3 where such claim relates to the Goods or Software being used other than for the purpose for which they were designed.
- 11.4 Should any of the Goods or the Software or their use become, or in the opinion of the Supplier, may become, the subject of a claim in respect of the infringement of the Intellectual Property Rights of a third party the Supplier may:
- 11.4.1 use all reasonable endeavours to obtain for the Customer a right to use the Goods or the Software by procuring a licence or otherwise; or
- 11.4.2 where technically possible modify the Goods and/or the Software to remove the infringement; or
- 11.4.3 replace the Goods and/or the Software with other non-infringing products with substantially equivalent functions and performance; or
- 11.4.4 refund the depreciated price of the Goods and/or the Software calculated on a straight-line basis over five years commencing upon the date of delivery at 20 percent (20%) per year or part thereof. The terms of this clause 11.4.4 state the limit of the Supplier's liability to refund the price or part thereof on any Goods or Software in the event of such infringement preventing their use for the purpose for which they were designed.
- 11.5 The Customer shall notify the Supplier in writing without delay in the event of it being of the opinion that the Goods and/or the Software or their use may infringe the Intellectual Property Rights of any third party.
- 11.6 Save as provided in this clause 11 the Supplier shall not be under any liability in respect of any claim of infringement of any third party Intellectual Property Rights.

12. TERMINATION

- 12.1 Either party may terminate the Contract with immediate effect if:
- 12.1.1 the other party commits a material breach of its obligations under the Contract, and, in the case of a breach capable of being remedied, does not remedy the breach within thirty (30) days after receipt of notice in writing from the non-defaulting party requiring it to do so; or
- 12.1.2 payment of any sum due by one party to the other remains unpaid for a period of thirty (30) days after issue of final demand therefor; or
- 12.1.3 the other party ceases to trade or to pay its debts and in the normal course of business, enters into or proposes to enter into a voluntary arrangement or composition with its creditors, becomes insolvent, bankrupt or goes into liquidation (other than for the purpose of solvent reconstruction or amalgamation) or has a receiver, administrator, trustee or similar officer appointed in respect of all or substantial part of its business and assets or otherwise ceases to be a validly existing corporation.
- 12.2 The Supplier may terminate the Contract with immediate effect if the Customer suffers a significant change of ownership, or merges or consolidates with any other party with the result that the Control of the Customer vests in a competitor.
- 12.3 Termination of the Contract shall have no effect on the rights and remedies of either party which have arisen prior to termination.

- 12.4 The Customer shall return to the Supplier promptly following termination (carriage and insurance paid) or otherwise deal with as the Supplier may request, all Goods in the Customer's possession or control which have not been paid for by the Customer.

13. CONFIDENTIALITY

The parties undertake on behalf of themselves, their employees, agents and permitted subcontractors that they will keep confidential and will not use for their own purposes (other than fulfilling their obligations under the Contract) nor without the prior written consent of the other disclose to any third party any information of a confidential nature relating to the other (including, without limitation, any trade secrets, confidential or proprietary technical information, trading and financial details and any other information of commercial value) which may become known to the other under or in connection with the Contract. This clause shall not apply to any such information which either party can show is public knowledge or was already known to it at the time of disclosure or subsequently becomes public knowledge other than by breach of the Contract or subsequently comes lawfully into its possession from a third party who was not restricted from disclosing it. Both parties shall return to the other all confidential information of the other in written or tangible form or any other media on the termination of the Contract. The terms of this clause 13 shall survive the expiry or earlier termination of the Contract.

14. LIABILITY

- 14.1 Except as provided in clause 14.3 below, the Supplier's liability for any loss, damage, cost or expenses under or in connection with the Contract and in connection with the Goods and Services provided by the Supplier howsoever arising, including without limitation, loss, damage cost or expenses caused by breach of contract, negligence or breach of statutory or any other duty shall in no circumstances exceed the following aggregate limitations:
- 14.1.1 £1,000,000 for loss, damage, costs or expenses in respect of physical damage to or loss of tangible property; and
- 14.1.2 in the case of any other loss, damage, costs or expenses, the lower of £250,000 or, where applicable, the aggregate value of the Contract Prices paid for the Goods and/or Services to which any claims for loss, damage, cost and expenses relate.
- 14.2 The Supplier shall not in any event be liable for any pecuniary loss or loss of profits, loss or business, loss of contracts, loss or use or loss of data or any special, indirect or consequential loss or damage whatsoever and howsoever caused.
- 14.3 The exclusions and limitations contained in clauses 14.1 and 14.2 shall not apply to any loss, damage, cost and expenses in respect of injury to, illness or death of any person caused by negligence on the part of the Supplier.
- 14.4 The terms of this clause 14 shall survive the expiry or earlier termination of the Contract.

15. FORCE MAJEURE

Neither party will be liable to the other party for any delay in or failure to perform or comply with its obligations under this Agreement as a result of Force Majeure. The affected party should promptly notify the other of the commencement and cessation of Force Majeure. If Force Majeure continues for a period in excess of ninety (90) days, either party shall be entitled to terminate the Contract forthwith by written notice and without liability for termination. If the Contract is terminated under this clause 15 all orders for Goods and Services placed prior to the date of termination will be deemed to have been cancelled and the Customer shall pay the Supplier for all Goods and Services already supplied, work-in progress and the cost of materials reasonably ordered by the Supplier in the expectation of completing the Contract.

16. WAIVER

Any failure or delay by either party to exercise or enforce any right shall not affect its right to exercise or enforce that right against the other party nor shall any waiver of any breach of any provision be taken as a waiver of any subsequent breach or of the provision itself. To be effective any waiver must be in writing, signed by an authorised representative of the waiving party, and be delivered to the other party.

17. ENTIRE AGREEMENT AND VARIATION

The Contract embodies the entire agreement between the parties regarding its subject matter to the exclusion of any prior communications. The parties acknowledge that neither has placed any reliance on any prior communications other than those expressly incorporated in the Contract. The parties irrevocably and unconditionally waive any right that they may have to rescind the Contract and/or claim damages for any misrepresentation whether or not contained in the Contract or breach of any warranty not contained in the Contract unless such warranty or misrepresentation was made fraudulently. The Customer also acknowledges that all particulars, descriptions, specifications and details of weight and dimensions set out in catalogues, brochures and similar documents are approximate only and intended for general guidance. No variation of the terms and conditions of the Contract shall have effect unless it is agreed to in writing and signed by the parties' authorised representatives.

18. SEVERABILITY

If any provision of the Contract, including any part of any clause, is held as void, contrary to law or unenforceable, the validity and enforceability of the remainder of the Contract shall not be affected.

19. NOTICES

Any notice to be given under the terms of the Contract shall be given in writing and sent by recorded delivery post and addressed to the party for whom it is intended at its address stated in the Contract, or such other address as may be notified in writing subsequently for the receipt of notices. Notices so served shall be deemed to have been received 36 hours after posting.

20. LAW AND JURISDICTION

The Contract shall be subject to and interpreted in accordance with English Law and the parties submit to the non-exclusive jurisdiction of the English Courts.