

1. INTERPRETATION
- 1.1 In these Conditions the following words have the following meanings:
- "the Credit Account Holders" those Buyers who have opened a credit account with the Company "the Buyer" means the person(s), firm or company who purchases the Goods and/or Services from the Company;
- "Call-Out Fee" means the Company's fees on the date on which the Services are requested to cover travelling time and any Services provided in the first half hour;
- "the Company" means Trendast Limited, trading as Mulmar, Co. Reg No 02005998 whose registered office is situated at Inspiration House, 152 Great North Road, Hatfield, Hertfordshire AL9 5JN;
- "Conditions": these terms and conditions as amended from time to time
- "Contract" the contract between the Company and the Buyer for the supply of Goods and/or Services in accordance with these Conditions;
- "Delivery Point" means the place where delivery of the Goods is to take place, or the place where provision of the Services is to take place, under condition 3;
- "Goods" means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
- "Handling Charge" means an amount of up to 20 per cent. of the price of the Spare Parts and Accessories such amount to be determined in the Company's sole discretion;
- "Half Hourly Rate" means the Company's prices for providing the particular Service (which may vary from Service to Service) on the date on which the performance of Services is completed
- "Services" any installation, maintenance or repair services provided by the Company to the Buyer;
- "Spare Parts and Accessories" means any spare parts and accessories and equipment that have been purchased by the Buyer from the Company
- 1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these Conditions headings will not affect the construction of these Conditions.
2. APPLICATION OF TERMS
- 2.1 Subject to any variation under condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and Conditions (including any terms or Conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or Conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales of Goods and provisions of Services to the extent that these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 2.4 Each order for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods and/or Services subject to these Conditions.
- 2.5 A contract shall be formed when acceptance of the Buyer's order is confirmed either orally or in writing by the Company's authorised representatives and the quantity and description of Goods shall be as set out or referred to in the relevant Buyer's order if accepted by the Company.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
3. DELIVERY OF GOODS AND PROVISION OF SERVICES
- 3.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business.
- 3.2 The Buyer will take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.
- 3.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 3.4 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 3.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods will be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).
- 3.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading/unloading the Goods.
- 3.7 Unless otherwise agreed, installation of the Goods is the responsibility of the Buyer. All goods supplied by the Company should be installed in accordance with any installation instructions that may be provided with the Goods. Failure by the Buyer to provide accurate information in response to any requests by the Company prior to installation will invalidate the warranties contained in clause 8 of these Conditions.
- 3.8 Training on use and daily maintenance may be given at the time of installation. Any calls for further training or for further training on a day other than that of installation will be chargeable Services and will be provided on the terms set out in these Conditions.
- 3.9 Unless otherwise agreed in writing by the Company the Services shall be provided at the Buyer's place of business.
- 3.10 The Company shall use its reasonable endeavours to provide the Services on any dates specified by the Company provided that time for the provision of the Services shall not be of the essence. If no dates are so specified, provision of the Services will be within a reasonable time.
4. NON-DELIVERY OF GOODS AND NON PROVISION OF SERVICES
- 4.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 days of the date when the Goods would in the ordinary course of events have been received.
- 4.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 4.4 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the provision of the Services.
5. RISK/TITLE
- 5.1 The Goods are at the risk of the Buyer from the time of delivery.
- 5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 5.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- (e) notify the Company immediately if it becomes subject to any of the following events:
- (i) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (ii) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of that other party;
- (iv) the Buyer (being an individual) is the subject of a bankruptcy petition or order;
- (v) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (vi) an application is made to court, or an order is made, for the appointment of an administrator if by a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer (being a company);
- (vii) a floating charge holder over the assets of the Buyer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (viii) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the Buyer;
- (ix) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
- (x) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (xi) the Buyer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- but the Buyer may resell or use the Goods in the ordinary course of its business.
- 5.4 If before ownership of the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 5.3(e) above, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
6. PRICE
- 6.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price quoted by the Company to the Buyer.
- 6.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.
- 6.3 The Call-Out Fee shall be charged for each separate provision of Services. Any Services which are provided beyond the first half hour shall be chargeable for every half hour thereafter at the Half Hourly Rate for the particular service being provided.
- 6.4 Any parts and fittings used in the provision of the Services shall be deemed to be "Goods" for the purposes of these Conditions.
- 6.5 Payments due for the provision of Services shall be exclusive of any value added tax which the Buyer shall be liable to pay in addition when it is due to pay for the Services.
7. PAYMENT
- 7.1 Save in respect of Credit Account Holders, payment of the price for the Goods shall be on the date of the invoice and an invoice will be issued after the Goods are delivered or deemed to be delivered.
- 7.2 Save in respect of Credit Account Holders, payment for the Services shall be made on the date of the invoice and an invoice will be issued after the Services are provided or deemed to have been provided.
- 7.3 A Credit Account Holder shall make payment for Goods and Services within such time period after invoicing as may be agreed by the Company in writing with that particular Credit Account Holder.
- 7.4 Time for payment shall be of the essence.
- 7.5 No payment shall be deemed to have been received until the Company has received cleared funds.
- 7.6 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 7.7 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 7.8 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
8. QUALITY
- 8.1 Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 8.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period of 3 months from the date of delivery (unless a longer warranty period is agreed in writing with the Company), the Goods will:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1994; and
- (b) be reasonably fit for its purpose.
- 8.3 The Company shall not be liable for a breach of any of the warranties in condition 8.2 unless:
- (a) the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- 8.4 The Company shall not be liable for a breach of any of the warranties in condition 8.2 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 8.5 Subject to Conditions 8.3 and 8.4, if any of the Goods do not conform with any of the warranties in condition 8.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.
- 8.6 If the Company complies with condition 8.5 it shall have no further liability for a breach of any of the warranties in condition 8.2 in respect of such Goods.
- 8.7 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 3 month period.
- 8.8 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.
9. RETURN OF SPARE PARTS AND ACCESSORIES
- 9.1 The Buyer shall not have the right to return Goods or equipment which are not defective.
- 9.2 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.
10. LIMITATION OF LIABILITY
- THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE
- 10.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
- (e) defective products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1:
- (a) the Company shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods and/or Services.
11. ASSIGNMENT
- 11.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 11.2 The Company may assign the Contract or any part of it to any person, firm or company.
12. FORCE MAJEURE
- The Company shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under the Contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
13. GENERAL
- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 13.5 The parties to this Contract do not intend that any term of this 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.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
14. COMMUNICATIONS
- 14.1 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 or by email:
- (a) (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
- (b) (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 this Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- (a) 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);
- (b) if delivered by hand, on the day of delivery;
- (c) if sent by facsimile or by email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.3 Communications addressed to the Company shall be marked for the attention of the Company's Secretary.