

# Eildon Systems

## TERMS AND CONDITIONS

### 1. General

Any contract of sale undertaken by Eildon Systems (the Company) is deemed to incorporate these terms and conditions; no variation, modification of or, substitution for these terms and conditions (even if included or referred to in the Buyer's document placing the order) shall be binding on the Company unless specifically accepted by the Company in writing.

### 2. Prices

Prices are subject to withdrawal or alteration without notice. Orders are accepted subject to the condition that goods will be invoiced at prices ruling despatch unless otherwise stated on any official quotation of the Company. Prices exclude delivery charges and VAT, unless otherwise stated on proforma invoices or official quotations.

### 3. Acceptance

No order shall be binding on the Company unless it has been confirmed by the Company in writing. All quotations are open for acceptance for the period stated thereon and if there is no period stated within 30 days from the date thereon. No alterations or variations of the terms and conditions of any order are binding on the Company unless agreed prior thereto in writing by the Company.

### 4. Alteration

Alterations to any orders accepted by the Company cannot be made without the written consent of the Company and any additional costs involved will be chargeable to the Buyer.

### 5. Specification

All information regarding the Company's goods contained in literature, catalogues, web-site, or other similar matter submitted to the Buyer by the Company, whilst given in good faith, must be regarded only as approximate. The Buyer's judgement must be relied upon as to the nature, quality and suitability for the Buyer's purpose of the Company's goods and not upon any representation made by the Company, its servants or agents either orally or in writing.

### 6. Cancellations

Cancellation of any order after acceptance by the Company cannot be without the Company's consent and in no circumstances can the Company allow cancellation of order for goods made or specifically adapted to the Buyer's requirements.

### 7. Return of Goods

Goods which have been supplied in accordance with the Buyer's order, but which are subsequently returned, will only be credited if the Company's written agreement to the return has first been obtained, and the price at which the goods will be credited has been agreed. The Company reserves the right to make a charge where necessary to cover the Company's cost in putting the goods returned into re-saleable condition or any discount that the Company finds necessary to make if the goods are resold as used equipment.

### 8. Delivery

Unless otherwise specified in the quotation or any written agreement between the Company and the Buyer delivery shall take place when the goods are delivered at the Buyer's premises. Estimates of delivery and times are to be regarded as approximate only and the Company accepts no liability for any loss, injury, damage or expenses consequent upon any delay delivery of the goods. Offers for delivery from stock are made subject to goods remaining unsold on receipt of order.

### 9. Loss Damage or Shortage

Liability will not be accepted by the Company for damage or loss during transit unless the carriers and the Company are notified in writing within three days of the receipt of goods and in any event the Company's liability shall be limited to the repair or replacement of the items lost or damaged. The Company must receive any notice of non-delivery within ten days of invoice date.

### 10. Risk

All risk will pass to the Buyer when the goods are delivered to the Buyer, delivery being defined as in condition eight above.

### 11. Export Sales

The Buyer shall be responsible for nominating a shipping agent and the method under which the goods will be shipped. Unless otherwise stated in a separate agreement the contract will be considered complete ex-factory Innerleithen with all subsequent shipping and insurance charges being the responsibility of the Buyer. Risk of the goods shall pass on delivery to the Buyer's shipping agents or his carrier. Property in the goods shall pass as in condition thirteen below.

### 12. Financial Terms

Payment shall be made by the Buyer in accordance with any contractual schedule or agreement or immediately upon receipt of the Company's invoice 30 days from invoice date unless specified in writing. If the purchase price or part thereof is not paid for a period in excess of thirty days after invoice date the Company shall be entitled to charge and the Buyer shall pay interest calculated at the rate of 3% (three percent) per month upon the purchase price or any part of the purchase price which is outstanding.

### 13. Title in the Goods

Until payment, by the Buyer of the whole of the monies payable in respect of the goods or the property in the goods or any part of them will not pass to the Buyer. Until the property has so passed the Buyer shall hold the goods as bailee and will at its own expense keep the goods safe and insured against customary commercial risks and shall keep them separately stored and in a readily identifiable state. Until the property in the goods has so passed the Buyer shall return the goods to the Company on demand and the Company shall without prejudice to any other rights be entitled to go upon the property of the Buyer and repossess and remove the goods. The Buyer shall be entitled without prejudice to its fiduciary duty to sell the goods and pass property in the same to third party providing sums owing to the Company by the Buyer under contract have been paid and all such proceeds shall be placed by the Buyer into a separate bank account.

### 14. Goods on Trial

When the Company accepts "on approval" orders it is only on the strict condition that the goods are on approval for 14 days, unless otherwise agreed in writing by the Company and after the expiration of that time which runs from delivery or collection the goods are deemed to have been purchased by the Buyer and the Buyer will be invoiced for the goods and shall pay in accordance with twelve above.

### 15. Warranty

The Company's liability for replacing goods which have proved, to the Company's reasonable satisfaction, to be defective under careful use because of defective materials, whether used by the Company, its associates or suppliers, or because of faulty workmanship of the Company's employees before and during the specified warranty period from date of delivery, is limited to replacing such articles free of charge. Any claim under this guarantee by the Buyer notifying the Company of the defect in writing within the warranty period and 15 days from the date of delivery. No claim under this guarantee by the Buyer shall be grounds for the Buyer withholding payment of any sum due to the Company under this or any other contract. The provisions of section 12 of the Sale of Goods Act 1979 shall apply to this contract, but all other warranties conditions and obligations imposed or implied by statute or otherwise as to quality or fitness for purpose of any goods supplied hereunder shall be construed subject to these conditions and insofar as they are consistent with these conditions they are excluded. In particular, without prejudice to the generality of the foregoing, the Company shall not be liable for the loss of profit, or goodwill of the Buyer or any other person arising, directly or indirectly from any breach of this contract any misrepresentation or negligence by or on behalf of the Company, or for any other indirect or consequential damage whatsoever, provided that nothing in this condition shall operate so as to exclude liability for death or personal injury arising from the negligence of the Company or its employees.

### 16. Liability for Loss

Subject to clause fifteen above, the Company shall not be liable for any loss or damage to property, whether belonging to the Buyer or to any third party caused by or arising from the actions of any of the Company's employees while they are at the Buyer's premises, site or works nor (unless negligence is proved) shall the Company be liable for death or personal injury thus caused to any employee of the Buyer or to any third party. The Buyer will indemnify the Company against any claims made against the Company by employees of the Buyer or by third parties arising out of such actions of the Company's employees for which the Company does not accept liability under these conditions.

The Buyer shall be responsible for any injury caused to any employee of the Company while he/she is at the Buyer's premises, site or works and agrees to indemnify the Company against any claim by any of its employees arising out of any injury so caused.

### 17. Assignment

The contract of which the conditions form part is personal to the Buyer who shall not assign the benefit thereof without the Company's written consent.

### 18. Patents and Trademarks

No warranty or representation is given by the Company that the goods do not infringe any letters, patent, trade marks, registered designs or other industrial rights.

### 19. Law

Any contract subsisting between the Company and the Buyer shall be construed in all respects in accordance with the Law of Scotland and unless otherwise agreed is subject to the jurisdiction of the Scottish Courts.