

KOMCEPT SOLUTIONS LTD. - TERMS AND CONDITIONS OF SALE

1. **INTERPRETATION**
- 1.1 In these Conditions, unless the context requires otherwise:
- 1.1.1 the following words and expressions have the following meanings:
 - "**Business Day**" means 9 am to 5 pm on any day (not being a Saturday, Sunday or public holiday) when clearing banks in the City of London are open for the transaction of general sterling banking business;
 - "**Buyer**" means the person, firm or company who purchases Goods from the Company;
 - "**Company**" means Komcept Solutions Limited, a company registered in England and Wales with company number 4291645 and whose registered office is at Ridgeway Farm, Hatfield Road, Ashton, Northampton, NN2 2JR;
 - "**Contract**" means any contract between the Company and the Buyer for the sale and purchase of Goods which incorporates these Conditions;
 - "**Delivery Point**" means as agreed between the Company and the Buyer from time to time;
 - "**Goods**" means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
 - "**Loss**" means any direct, indirect or consequential loss (all three of which means include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and any similar loss), costs, damages, charges or expenses howsoever caused or arising, including as a result of breach of contract, tort and/or negligence; and
 - words denoting the singular shall include the plural number and vice versa;
 - unless otherwise stated, a reference to a "**condition**" is to a condition of these Conditions;
 - headings are for convenience only and do not affect the interpretation of these terms and conditions.
2. **APPLICATION OF TERMS AND CONDITIONS**
- 2.1 Subject to any variation under condition 2.5, the Contract shall be made on the terms and conditions contained in these Conditions to the exclusion (other than of any set out in the Contract) 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). Subject to any variation under condition 2.5, these Conditions (together with the Contract) are the only terms and conditions on which the Company is prepared to deal with the Buyer in respect of the Goods.
- 2.2 Together with the Contract, these Conditions constitute the entire agreement and understanding of the Company and the Buyer in respect of their subject matter and supersede and exclude any previous agreement, understanding, undertaking, representation, warranty and arrangement relating to their subject matter. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract or these Conditions.
- 2.3 In the event of any inconsistency between the terms and conditions of the Contract and these Conditions, the terms and conditions of these Conditions shall prevail.
- 2.4 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.5 These Conditions apply to all the Company's sales of Goods to the Buyer and any variation to these Conditions and any representations, statements or warranties made by the Company, shall be deemed to be made by the Company.
- 2.6 Each order for Goods or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.
- 2.7 No order for Goods placed by the Buyer shall be deemed or taken to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.8 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.9 Any quotation given by the Company in respect of Goods is given on the basis that no contract for the sale and purchase of Goods shall come into existence until the Buyer has despatched a written acknowledgement of order to the Buyer or (if earlier) the Company delivers the Goods. Any such quotation is valid for a period of 30 days from its date, provided that the Company has not previously withdrawn it.
3. **DESCRIPTION OF GOODS**
- 3.1 The quality, quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 The Company reserves the right at its sole discretion to make minor alterations to the design, specification or construction of Goods without prior notification to the Buyer.
4. **DELIVERY**
- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Delivery Point.
- 4.2 Upon delivery the Buyer shall be required to sign such document to confirm delivery, as the Company may provide, from time to time.
- 4.3 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 effective unless expressly stated in the order or as specified, delivery shall be within a reasonable time or as may be agreed between the Company and the Buyer from time to time.
- 4.4 Save as is provided in condition 5, the Company shall not be liable for any Loss caused by or resulting from any delay in the delivery of the Goods, nor shall any delay entitle the Buyer to terminate or rescind the Contract.
- 4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or if the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, then:
 - 4.5.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - 4.5.2 the Goods shall be deemed to be delivered to the Buyer at the Delivery Point;
 - 4.5.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance);
 - 4.5.4 The Buyer shall provide at the Delivery Point and at its own expense adequate and appropriate equipment and manual labour for loading the Goods;
 - 4.5.5 If the Buyer decides that following delivery of, and payment for, the Goods the Buyer wishes to return such Goods to the Company then the Buyer shall offer to sell such Goods to the Company upon such terms as may be agreed between the Company and the Buyer at the time.
- 4.6 The Company shall be under no obligation to buy the unwanted Goods from the Buyer and shall do so at the Company's sole discretion.
5. **NON-DELIVERY**
- 5.1 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.
- 5.2 The Company shall not be liable for any Loss caused by or resulting from any non-delivery of Goods unless the Buyer gives written notice to the Company of the non-delivery within seven (7) days of the date when the Goods would have been delivered.
- 5.3 Any liability of the Company for any Loss resulting (whether directly or indirectly) from any non-delivery of Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at a pro rata rate against any invoice raised for such Goods.
6. **RISK AND TITLE**
- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 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:
 - 6.2.1 the Goods; and
 - 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 6.3.2 store the Goods (at the Company's expense) in a secure place, separate 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;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 6.3.4 (at its own expense) maintain the Goods in satisfactory condition and keep them 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.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value;
 - 6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer shall inform the Company immediately if it is declared insolvent or unable to pay its debts as and when they fall due to any third party.
- 6.6 The Buyer's right to possession of the Goods shall terminate immediately if:
 - 6.6.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his or its creditors, or otherwise becomes insolvent or any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented in any court for the winding-up of the Buyer or for the grant of an administration order in respect of the Buyer; or
 - 6.6.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or these Conditions or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 6.6.3 the Buyer encumbers or in any way charges any of the Goods.
- 6.7 In the event of the Buyer's right to possession of the goods terminating, the Company shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods has not passed from the Company.
- 6.8 The Buyer grants the Company, 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 where the Buyer's right to possession has terminated, to recover them.
- 6.9 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.10 If any of the events set out in conditions 6.6.1, 6.6.2 or 6.6.3 occur or if the Buyer shall fail to make payment of any sum in full when such payment is due to the Company, then without prejudice to any other right or remedy to which the Company may be entitled, the Company may at its absolute discretion suspend all future deliveries of Goods to the Buyer and/or terminate the Contract (including these Conditions).
- 6.11 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
7. **TERMINATION**
- 7.1 The Company may at any time prior to any Goods being delivered terminate the order for those Goods without any liability for any Loss caused by or resulting from such cancellation.
8. **PRICE**
- 8.1 Unless otherwise agreed by the Company in writing in the Contract, the price for the Goods shall be the price set out in the Company's price list on the date of delivery or deemed delivery.
- 8.2 The price for the Goods shall be exclusive of any value added tax and/or sales taxes, but inclusive of all costs or charges in relation to packaging, loading, unloading and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods, unless otherwise determined by the Company in writing (either in the quotation or order acknowledgement issued by the Company).
9. **PAYMENT**
- 9.1 Payment for the Goods shall be made by the Buyer to the Company in cash or cleared funds prior to delivery of the Goods pursuant to condition 5, unless the Buyer has an approved credit account with the Company, as set out in condition 9.3.
- 9.2 At all times payment of the price for the Goods is due in pounds sterling unless otherwise agreed as part of the Contract.
- 9.3 Subject to condition 9.1, if the Buyer is granted a credit account by the Company, then payment of the price for the Goods shall be made by the Buyer within 30 days from the date of the Company's invoice, unless otherwise determined in writing by the Company. For the avoidance of the doubt, in relation to any credit account granted by the Company to the Buyer, the Company may at its sole discretion and at any time change the payment terms of such credit account, including but not limited to, withdrawing the credit account, reducing any credit granted or bring forward the due date for any payment.
- 9.4 Time for payment shall be of the essence.

- 9.5 No payment shall be deemed to have been made until the Company has received it as cleared funds.
- 9.6 All payments payable to the Company under the Contract or these Conditions shall become due immediately on its termination despite any other provision.
- 9.7 If the Buyer fails to pay the Company any sum due pursuant to the Contract and/or these Conditions on the date due, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8%, 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.
- 9.8 All amounts due under the Contract and these Conditions from the Buyer to the Company shall be paid in full without any deduction or set off or withholding other than as required by law (in which event the Buyer shall simultaneously pay to the Company such additional amounts as will result in the receipt by the Company of a net amount equal to the full amount which would have been receivable had no such deduction or set off or withholding been required) and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
10. **WARRANTY**
- 10.1 Subject to any variation to the other provisions of these Conditions and of the Contract, the Company warrants that upon delivery, and for a period of twelve (12) months from the date of delivery, the Goods shall:
 - 10.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - 10.1.2 be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer has made known that purpose to the Company in writing prior to the Company accepting the Buyer's order for those Goods.
- 10.2 The Company shall not be liable for a breach of any of the warranties in condition 10.1 unless and until:
 - 10.2.1 the Buyer gives written notice of the relevant defect to the Company and, if the defect is as a result of damage in transit to the Delivery Point, within five (5) days of the date of delivery;
 - 10.2.2 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 Company's reasonable cost for the examination to take place there.
- 10.3 The Company shall not be liable for a breach of any of the warranties in condition 10.1, if:
 - 10.3.1 the Buyer makes any further use of such Goods after giving such notice; or
 - 10.3.2 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 good trade practice;
- 10.3.3 the Buyer stores or repairs such Goods without the written consent of the Company;
- 10.3.4 the defect arises as a result (directly or indirectly) of the Buyer's specification or design supplied by the Buyer to the Company in respect of the Goods; or
- 10.3.5 the Company (in good faith and to meet the Buyer's requirements) decides to manufacture the Goods in accordance with incomplete or informally released specifications, designs or drawings supplied by the Buyer used by the Company to manufacture the Goods.
- 10.4 Subject to condition 10.2 and condition 10.3, if any of the Goods do not conform with any of the warranties in condition 10.1, the Company shall, at the Buyer's option, repair or replace such Goods (or the defect part) or refund the price of such Goods at a pro rata rate provided that, if the Company so requests, the Buyer shall, at the Company's reasonable expense, return the Goods or the part of such Goods which is defective to the Company.
- 10.5 If the Company complies with condition 10.4 it shall have no further liability for a breach of any of the warranties in condition 10.1 in respect of such Goods.
- 10.6 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the twelve (12) month period referred to in condition 10.1.
11. **LIMITATION OF LIABILITY**
- 11.1 Subject to conditions 4, 5 and 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - 11.1.1 any breach of the Contract and/or these Conditions;
 - 11.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - 11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract and these Conditions.
- 11.3 Nothing in the Contract or these Conditions excludes or limits or purports to exclude or limit the liability of the Company:
 - 11.3.1 for death or personal injury caused by the Company's negligence;
 - 11.3.2 for any matter which it would be illegal or unlawful for the Company to exclude or attempt to exclude its liability; or
 - 11.3.3 for fraud or fraudulent misrepresentation.
- 11.4 Subject to conditions 10.1, 10.2 and 10.5:
 - 11.4.1 the Company's total liability in a contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, in connection with the performance or contemplated performance of the Contract and/or these Conditions shall be limited to the consideration paid pursuant to the Contract by the Buyer to the Company in respect of the Goods; and
 - 11.4.2 the Company shall not be liable to the Buyer for any economic loss, loss of profit, loss of business, depletion of goodwill or otherwise howsoever, in each case whether direct, indirect or consequential, (howsoever caused) which arise out of or in connection with the Contract and/or these Conditions or the sale of Goods to the Buyer
- 11.5 The Buyer shall indemnify the Company against, and pay on demand, any liability incurred by the Company arising from any fault or defect in the specification or design of the Goods and any costs, losses, claims, demands and expenses arising out of or in connection with that liability (except to the extent that such liability arises as a result of the default of the Company (including, failing to follow any specification provided by the Buyer for the Goods)).
- 11.6 Without prejudice to the right of the Company or any third party to challenge the validity of any Intellectual Property of the Buyer, the Buyer shall indemnify the Company against, and pay on demand, any liability incurred by the Company arising from any breach of any third party's Intellectual Property subsisting in respect of the specification or designs supplied by the Buyer in respect of the Goods and any costs, losses, claims, demands and expenses arising out of or in connection with that liability. For the purpose of this condition 11 the term "**Intellectual Property**" shall mean any patent, copyright, registered design, trademark, database rights or other industrial or intellectual property right.
- 11.7 The Buyer hereby acknowledges that it shall not acquire any rights in respect of any Intellectual Property in respect of any specifications, designs, drawings, manufacturing process, business information, client or customer databases, or any document or information supplied by the Company to the Buyer pursuant to this Contract, and that all such rights shall remain vested in the Company.
- 11.8 The Company will exclusively defend or pursue any claims made in connection with its intellectual property rights.
12. **ASSIGNMENT**
- 12.1 The Company may at any time assign, transfer, charge or otherwise in any manner dispose of or deal with the Contract or any of its rights under it or sub-contract any of its obligations under it.
- 12.2 The Buyer shall not be entitled to assign, transfer, charge or otherwise in any manner dispose of or deal with the Contract or any of its rights under it, or purport to do so, without the prior written consent of the Company.
13. **SEVERANCE**
- 13.1 If any provision (or part provision) of the Contract and/or these Conditions shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions or the rest of the provision (as the case may be) of the Contract and/or these Conditions, which shall remain in full force and effect.
- 13.2 If any provision (or part provision) of the Contract and/or these Conditions is so found to be illegal, invalid or unenforceable but would be legal, valid or enforceable if some part of it were to be deleted or modified, such provision (or part provision) shall apply with such deletion(s) and/or modification(s) (as the case may be) as may be necessary to make it legal, valid and enforceable.
14. **WAIVER AND REMEDIES**
- 14.1 The failure by the Company to exercise or any delay in exercising any right, power or remedy whether provided by the Contract and/or these Conditions or otherwise does not constitute a waiver of or impair such right, power or remedy or constitute a waiver of any other right, power or remedy. A waiver by the Company of a breach of any of the terms of the Contract and/or these Conditions or of a default under the Contract and/or these Conditions does not constitute a waiver by the Company of any other breach or default and shall not affect the other terms of the Contract and/or these Conditions. No single or partial exercise by the Company of any such right, power or remedy shall preclude or impair any other or further exercise of the same or any other right, power or remedy by the Company whether provided by the Contract and/or these Conditions or otherwise. The rights and remedies of the Company under the Contract and/or these Conditions are not exclusive of any rights or remedies provided by law.
15. **FORCE MAJEURE**
- 15.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business (or part of its business) due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental action, acts of war or national emergency, acts of terrorism, protest, riot, civil commotion, fire, explosion, flood, epidemic, locusts or strikes or other labour disputes (whether or not relating to its 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 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract with immediate effect.
16. **NOTICES**
- 16.1 All notices or other communication from the Company to the Buyer or vice versa in respect of the Contract and/or these Conditions or their subject matter shall be in writing.
- 16.2 Any notice or communication served in accordance with this condition 16 shall be deemed to have been served:
 - 16.2.1 if delivered by hand, on the Business Day following delivery;
 - 16.2.2 if sent by prepaid first-class post, on the second Business Day following posting; and
 - 16.2.3 if sent by facsimile transmission or electronic mail, on the Business Day following transmission.
- 16.3 In proving service of any such notice or communication, it shall be sufficient:
 - 16.3.1 in the case of delivery by hand, to prove that such notice or communication was properly delivered;
 - 16.3.2 in the case of posting, to prove that such notice or communication was properly stamped, addressed and placed in the post; and
 - 16.3.3 in the case of facsimile transmission or electronic mail, to produce the delivery report evidencing the notice was sent and confirming that delivery was completed.
17. **THIRD PARTY RIGHTS**
- 17.1 The Contract and these Conditions are made for the benefit of the parties and their successors and permitted assigns and are not intended to benefit or create any right enforceable by any other person (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).
18. **GOVERNING LAW AND JURISDICTION**
- 18.1 The Contract and these Conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and the parties irrevocably agree that the courts of England have non exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or these Conditions or their subject matter or formation (including non-contractual disputes or claims).
19. **CONFIDENTIALITY**
- 19.1 The Buyer undertakes that it shall not disclose to any person any documentation, specifications, research, designs, drawings, quotations or internal drawings supplied by the Company and other confidential information concerning the business, research and design process, manufacturing processes, customers, clients or suppliers of the Company, except as provided by condition 19.2.
- 19.2 The Buyer may only disclose the Company's confidential information:
 - 19.2.1 to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the Buyer's obligations under this agreement. The Buyer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Company's confidential information comply with this condition 19.2; and
 - 19.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 19.3 The Buyer shall not use the Company's confidential information for any purpose other than to perform the Buyer's obligations under this Contract.