

**These terms and conditions do not affect your rights as a Consumer.**

**1. Application of Conditions**

- 1.1 Active Technologies shall supply and the Customer shall purchase the Goods and Services in accordance with the accepted order which are subject to these Conditions.
- 1.2 The Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

**2. Definitions and Interpretation**

2.1 In these Conditions:-

- "Business Day"** means any day other than a Saturday, Sunday or bank holiday;
- "the Customer"** means the person who accepts a quotation or offer of Active Technologies for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by Active Technologies;
- "Commencement Date"** means the commencement date for this agreement as set out in the accepted order;
- "the Contract"** means the contract for the purchase and sale of the Goods and supply of the Services under these conditions;
- "these Conditions"** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and Active Technologies;
- "the Delivery Date"** means the date on which the Goods and Services are to be delivered as stipulated in the Customer's order and accepted by Active Technologies;
- "the Goods"** means the goods (including any instalment of the goods or any parts for them) which Active Technologies is to supply in accordance with these Conditions;
- "month"** means a calendar month;
- "the Services"** means the Services to be provided to the Customer as set out in the accepted order;
- "Active Technologies"** means Active Technologies Limited, a company registered in England under 5351870, and whose principal office is at Hethel Engineering Centre, Chapman Way, Hethel, Norwich, NR14 8FB.
- "Intellectual Property Rights" or "IPR"** means any patent, registered or unregistered trade mark or service mark, copyright, registered design or unregistered design right, any application for any of the foregoing, any right in respect of technical or commercial information and any other form of protection;
- "Information"** means all drawings, descriptions, specifications, designs, documents and other information (including without limitation features contained in any of the foregoing or in any objects or software), whether business or technical.
- "writing"** includes any communications effected by telex, facsimile transmission, electronic mail or any comparable means.

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**3. Basis of Sale and Service**

- 3.1 Active Technologies employees or agents are not authorised to make any representations concerning the Goods and Services unless confirmed by Active Technologies in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and Active Technologies.
- 3.3 Sales literature, price lists and other documents issued by Active Technologies in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. An order placed by the Customer may not be withdrawn cancelled or altered prior to acceptance by Active Technologies and no contract for the sale of the Goods and Services shall be binding on Active Technologies unless Active Technologies has issued a quotation which is expressed to be an offer to sell the goods and services or has accepted an order placed by the Customer by whichever is the earlier of:-
  - 1.1.1 Active Technologies's written acceptance;
  - 1.1.2 delivery of the Goods; or

<sup>1.1.3</sup> Active Technologies's invoice.

3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Active Technologies shall be subject to correction without any liability on the part of Active Technologies.

#### **4. The Goods**

4.1 No order submitted by the Customer shall be deemed to be accepted by Active Technologies unless and until confirmed in writing by Active Technologies's authorised representative.

4.2 The specification for the Goods shall be those set out in Active Technologies sales documentation unless varied expressly in the Customer's order (if accepted by Active Technologies). The Goods will only be supplied in the minimum units (or multiples) stated in Active Technologies price list or in multiples of the sales order as specified. Orders received for quantities other than these will be adjusted accordingly, illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by Active Technologies are intended as a guide only and shall not be binding on Active Technologies.

4.3 Active Technologies reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to Active Technologies specification, which do not materially affect their quality or performance.

4.4 No order which has been accepted by Active Technologies may be cancelled by the Customer except with the agreement in writing of Active Technologies on the terms that the Customer shall indemnify Active Technologies in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Active Technologies as a result of cancellation.

#### **5. The Services**

5.1 With effect from the Commencement Date Active Technologies shall, in consideration of the Fees being paid in accordance with the Terms of Payment, provide the services expressly identified in the accepted order or otherwise agreed under this agreement.

5.2 Active Technologies will use reasonable care and skill to perform the services identified in the accepted order or otherwise agreed under this agreement.

5.3 Active Technologies shall use all reasonable endeavours to complete its obligations under the Schedule, but time will not be of the essence in the performance of these obligations.

#### **6. Price**

6.1 The price of the Goods and Services shall be the price list current at the date of acceptance of the Customer's order or such other price as may be agreed in writing by Active Technologies and the Customer.

6.2 Where Active Technologies has quoted a price for the Goods and Services other than in accordance with Active Technologies published price list the price quoted shall be valid for 30 days only or such lesser time as Active Technologies may specify.

6.3 Active Technologies reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and Services to reflect any increase in the cost to Active Technologies which is due to any factor beyond the control of Active Technologies (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and Services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Active Technologies adequate information or instructions.

6.4 Except as otherwise stated under the terms of any accepted order or in any price list of Active Technologies, and unless otherwise agreed in writing between the Customer and Active Technologies, all prices are exclusive of Active Technologies charges for packaging and transport as specified in the accepted order.

6.5 The price is exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to Active Technologies.

#### **7. Payment**

7.1 All payments required to be made pursuant to this Agreement shall be made at the time of order, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.

7.2 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of the price or any other sum due under these terms and conditions then Active Technologies shall, without prejudice to any right which Active Technologies may have pursuant to any statutory provision in force from time to time, have the right to charge the Customer interest on a daily basis at an annual rate equal to the aggregate of 8 per cent and the base rate of Bank of England from time to time, on any sum due and not paid on the due date. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgement.

7.3 All payments shall be made to 'Active Technologies Ltd' as indicated on the form of acceptance or invoice issued by Active Technologies.

#### **8. Delivery and Performance**

8.1 Delivery of the Goods shall be made by Active Technologies delivering the Goods to the place in the United Kingdom specified in the accepted order.

8.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by Active Technologies in writing. The Goods may be delivered by Active Technologies in advance of the Delivery Date upon giving reasonable notice to the Customer.

- 8.3 If the Customer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, Active Technologies shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provision of Condition 10.1 of these Conditions risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to Active Technologies all costs and expenses including storage and insurance charges arising from such failure.
- 8.4 With effect from the Commencement Date Active Technologies shall, in consideration of the amount(s) being paid in accordance with the accepted order, provide the services expressly identified in the schedule or otherwise agreed under this agreement.

### 9. Non-Delivery of Goods and Services

- 9.1 If Active Technologies fails to deliver the Goods or Services and any of them on the Delivery Date other than for reasons outside Active Technologies reasonable control or the Customer's or its carrier's fault:-
- 9.1.1 if Active Technologies delivers the Goods and Services at any time thereafter Active Technologies shall have no liability in respect of such late delivery;
- 9.1.2 if the Customer gives written notice to Active Technologies within 7 Business Days after the Delivery Date and Active Technologies fails to deliver the Goods and Services within 14 Business Days after receiving such notice the Customer may cancel the order and Active Technologies liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to those not delivered over the price of the Goods not delivered

### 10. Risk and Property

- 10.1 Risk of damage to or loss of the Goods shall pass to the Customer at:-
- 10.1.1 in the case of Goods to be delivered at Active Technologies premises, the time when Active Technologies notifies the Customer that the Goods are available for collection; or
- 10.1.2 in the case of Goods to be delivered otherwise than at Active Technologies premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Active Technologies has tendered delivery of the Goods.
- 10.1.3 In the case of goods being installed by Active Technologies, the time that Active Technologies notifies the Customer that the installation is complete
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until Active Technologies has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Active Technologies to the Customer for which payment is then due.
- 10.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of Active Technologies, but if the Customer does so all money owing by the Customer to Active Technologies shall (without prejudice to any other right or remedy of Active Technologies) forthwith become due and payable.

### 11. Assignment

- 11.1 Active Technologies may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Active Technologies.

### 12. Defective Goods

- 12.1 If on delivery any of the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery "condition and contents unknown" the Customer gives written notice of such defect to Active Technologies within three business days of such delivery, Active Technologies shall at its option:-
- 2.1.1 replace the defective Goods within 14 days of receiving the Customer's notice; or
- 2.1.2 refund to the Customer the price for the goods which are defective;
- but Active Technologies shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice given by the Customer as aforesaid.
- 12.2 No Goods may be returned to Active Technologies without the prior agreement in writing of Active Technologies. Subject thereto any Goods returned which Active Technologies is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at Active Technologies sole discretion Active Technologies shall refund or credit to the Customer the price of such defective Goods but Active Technologies shall have no further liability to the Customer.
- 12.3 Active Technologies shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow Active Technologies instructions (whether oral or in writing), misuse or alteration of the Goods without Active Technologies approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.
- 12.4 Goods, other than defective Goods returned under Conditions 12.1 or 12.2, returned by the Customer and accepted by Active Technologies may be credited to the Customer at Active Technologies sole discretion and without any obligation on the part of Active Technologies.

12.5 Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.6 The Customer shall be responsible to ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory handling and sale of the Goods by the Customer is carried out in accordance with directions given by Active Technologies or any competent governmental or regulatory authority and the Customer will indemnify Active Technologies against any liability loss or damage which Active Technologies might suffer as a result of the Customer's failure to comply with this condition.

### 13. Customer's Default

13.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Active Technologies, Active Technologies shall be entitled to:-

13.1.1 cancel the order or suspend any further deliveries of Goods and Services to the Customer;

13.1.2 appropriate any payment made by the Customer to such of the Goods and Services (or the goods supplied under any other contract between the Customer and Active Technologies) as Active Technologies may think fit (notwithstanding any purported appropriation by the Customer); and

13.2 This condition applies if:-

13.2.1 the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or

13.2.2 the Customer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or

13.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

13.2.4 the Customer ceases, or threatens to cease, to carry on business; or

13.2.5 Active Technologies reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

13.3 If Condition 13.2 applies then, without prejudice to any other right or remedy available to Active Technologies, Active Technologies shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### 14. Liability

14.1 Except in respect of death or personal injury caused by Active Technologies negligence, Active Technologies will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of this contract, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by Active Technologies servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and Services.

14.2 The Customer shall indemnify Active Technologies against all damages, costs, claims and expenses suffered by arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agent or employees.

14.3 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.

14.4 Active Technologies shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of Active Technologies obligations if the delay or failure was due to any cause beyond Active Technologies reasonable control.

### 15. Communications

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by electronic mail:

15.1.1 (in the case of communications to Active Technologies) to its registered office or such changed address as shall be notified to the Customer by Active Technologies; or

15.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to Active Technologies by the Customer.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting); or

15.2.2 if delivered by hand, on the day of delivery; or

15.2.3 if sent by fax or electronic mail on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.

15.3 Communications addressed to Active Technologies shall be marked for the attention of the Managing Director.

### 16. Intellectual Property Rights

16.1 All IPR in the Services, Goods, specification(s) and design(s) of the Goods shall, be the property of Active Technologies. The Customer represents and warrants that the use of any design(s), specification(s) and/or instruction(s) (or any part thereof) provided directly or indirectly by the Customer will not infringe any rights of any third

party. The Customer shall indemnify and hold harmless Active Technologies against any and all claims alleging infringement of trademarks, trade names, patents, copyrights, designs, registered designs and/or any other IPR (including without limitation any "passing off" claims) which arise as a result of Active Technologies compliance with the Customer's specification(s), design(s) and/or instruction(s) (or any part thereof). The Customer shall notify Active Technologies forthwith of any claim(s) that the sale, use or other exercise of the goods infringes any IPR and give to Active Technologies all authority and information and every reasonable assistance required by Active Technologies for the defence of any such claim(s) and shall not itself admit, handle, deal with or compromise any such claim(s) except with the written consent of Active Technologies;

16.2 The Customer shall comply with all instructions of Active Technologies and all legislation in relation to the sale, processing, storage and use of the Goods or Services. Active Technologies may without liability cancel or suspend any deliveries or manufacture of any of the Goods or Services which have become the subject of a claim by a third party alleging infringement of any IPR.

16.3 The contract does not grant the Customer or any other third party any licence, express or implied, under any IPR of Active Technologies for the Services, Goods or any product, process, design or machine of which the Services or Goods form part, nor does the sale of the Services or Goods or supply of supporting information imply, represent or warrant that the Services or Goods do not infringe the rights (including without limitation the IPR) of a (or any) third party (and for the avoidance of doubt no indemnity is given by Active Technologies in relation to any such infringement(s) or alleged infringement(s)).

17. **Information:**

17.1 Any Information supplied or otherwise disclosed by Active Technologies is supplied or disclosed on the express understanding that such supply or disclosure shall not be construed as passing to the Customer any copyright (or any other rights whatsoever) in such Information. All rights including, without limitation, copyright and property in all such Information shall remain vested in Active Technologies.

18. **Force Majeure**

18.1 In the event that either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout (subject to Sub-clause 16.2) the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.

18.2 Sub-clause 16.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

18.3 Each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement.

18.4 If and when the period of such incapacity exceeds 3 months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

19. **Waiver**

No waiver by Active Technologies of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

20. **Severance**

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

21. **Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. **Governing Law and Jurisdiction**

These terms and conditions shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.